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NATIONAL LABOR RELATIONS BOARD

CASEHANDLING MANUAL

(PART TWO)

REPRESENTATION PROCEEDINGS

September 1989

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Introduction

This manual relates to representation proceedings and is Part Two of a three-part casehandling manual system. Part One relates to unfair labor practice proceedings and Part Three relates to compliance proceedings.

Purpose of Manual

This manual has been prepared by the General Counsel of the National Labor Relations Board pursuant to powers delegated to him/her by the Board. It is intended to provide procedural and operational guidance for the Agency's staff in the handling of representation cases under the National Labor Relations Act. It is not intended to be a compendium of either substantive or procedural law, nor can it be a substitute for a knowledge of the law. The guidelines included are not Board rulings or directives and although it is expected that they will be followed by staff employees in the handling of cases, it is also expected that there may be departures through exercise of professional judgment in varying circumstances. They are not intended to be and should not be viewed as binding procedural rules.

PREINVESTIGATION

11000–11016 *Initial Procedures*

11000 *Objective:* To the end that appropriate action consistent with the Act will eventually be taken, the filing of a petition is a condition precedent to and initiates the investigation of a question concerning representation, clarification of a bargaining unit, amendment of a certification, or withdrawal of union-shop authority.

11001 *Prefiling Assistance*

11001.1 *Determination Whether Situation Is Covered by the Act:* Approached by an individual who wants to raise a representation matter, the Board agent should explore the situation to determine initially whether, provided the proffered facts are accurate, the matter is one that is covered by the Act.

11001.2 *Situations Not Covered:* If the situation clearly is not covered by the representation parts of the Act, the Board agent should point out this fact and discourage the filing of a petition, but the individual should be advised that he/she still has the right to file a petition if he/she so desires. (If a petition is filed under these circumstances, it should be processed just as any other.) Even though no petition is filed under such circumstances, a brief memo of the salient facts should be prepared for the regional records.

11001.3 *Report on Inquiries:* Each Board agent should keep a running record of time spent during the month in rendering prefiling assistance and answering inquiries of the public and other Government agencies. Such record is maintained on Form NLRB-4536.

At the conclusion of an interview the Board agent should enter the date, check the type of inquiry, note subject of inquiry and name of individual, check the classification of person making inquiry, and note the result of the inquiry. If a charge or petition is filed, the case number should be noted. The time spent should be noted in the last column of the report.

At the end of the month all reports are submitted to the office manager who will compute and enter on the regional staffing report the total time spent by Board agents on prefiling assistance.

11001.4 *Situations Covered by the Representation Provisions of the Act:* If the situation is one that would appear to be covered by the representation provisions of the Act, the individual should be advised of the right to file a petition. General information as to Board policy and procedure with respect to the type of situation involved may be outlined; however, care should be taken to advise that any ultimate result may hinge on various considerations. The individual should be told that our representation processes are, in the normal case, invoked by the filing of a petition and, in the absence of a petition, no investigation into the matter will be made.

(Upon the filing of such petition, the Board agent, having procured a docket number, should conduct at once any further interview that might be required with respect to specific details and should prepare a memo. Pressures on the clerical staff should be minimized by the use of pen and ink. If, at any time prior to any notice to the other parties of the filing of the petition, the moving party advises that he/she does not wish to proceed, a withdrawal request may be solicited, received, and processed without service on or notification to other parties. If it appears that the petition needs "correction," a new—not an amended—petition should be substituted.)

11001.5 *Information as Contrasted With Advice:* In any case, requests for information may be honored only to the extent that they seek information as contrasted with advice, concerning rights, obligations, and general contents of the Act. Answers should be succinct, and they must include all reservations that are necessary in a field as fluid as the area covered by the Act. (For example, at one point or another, some such statement as "We cannot, of course, give advice," "cannot give advisory opinions," or "cannot commit the General Counsel or the Board" may be called for.) Extended correspondence should be discouraged and, if advice is persistently sought, resort to non-Board counsel should be suggested. Under no circumstances should specific counsel be recommended.

Regional personnel should not give advisory opinions as to the "legality" of given conduct or contract clauses.

11001.6 *Assistance in Preparation:* Assistance in the preparation of a petition may be rendered to the filing party, to the extent that such assistance involves the furnishing of forms, reasonable clerical/stenographic assistance, and wording of the petition itself.

11001.7 *Assistance in Remedying Defects:* If petitions (or amendments thereto) are received in the Regional Office that contain errors on their face, assistance may be rendered in remedying the defects.

In such cases docketing may be delayed pending a prompt communication with the filing party. If the filing party insists that the petition be docketed as is, these wishes should be honored. If the filing party cannot be reached by the end of the day the petition is received, the petition normally should be docketed that day.

11002 *Types of Cases; Who May File; Where To File*

11002.1 *Types of Cases*

a. *Representation Cases:* A representation case, initiated by the filing of a *petition* under Section 9(c) of the Act, takes the form of:

   1. An RC case, asserting the designation of the filing party as bargaining agent by a substantial number of employees in a described bargaining unit.

   2. An RM case, alleging that one or more original or continued claims for recognition as exclusive bargaining agent have been received by an employer.

   3. An RD case, asserting that the certified or currently recognized bargaining agent is no longer the representative as defined in Section 9(a).

b. *Union-Security Cases:* A UD case is initiated by the filing of a petition under Section 9(e) of the Act, alleging that the employees covered by a union-security clause existing under the proviso in Section 8(a)(3) desire that the authority to maintain such a clause be rescinded.

c. *Unit Clarification Cases:* A UC case is initiated by the filing of a petition under Section 9(b) of the Act alleging that a labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees in the unit.

d. *Amendment of Certification Cases:* An AC case is initiated by the filing of a petition under Section 9(b) of the Act, seeking amendment of a certification.

11002.2 *Who May File*

a. An RC or RD petition may be filed by an employee or a group of employees or an individual (except a supervisor) or a labor organization acting on their behalf, or by two or more labor organizations acting jointly.

b. An RM petition may be filed only by an employer.

c. A UD petition may be filed by 30 percent or more of the employees in the bargaining unit affected, or by an employee or group of employees acting on their behalf.

d. A UC or AC petition, in the absence of a question concerning representation, may be filed by a labor organization or by an employer.

NOTE: The petition should clearly indicate *the party filing it*, as opposed to the representative who signs it.

11002.3 *Where To File:* A *petition* is normally filed, in person or by mail, at the Regional Office in the Region in which the bargaining unit exists. If the unit exists in two or more Regions, the petition may be filed in any of such Regions.

A petition may be filed by handing it to a Board agent away from the Regional Office, in which case the date of receipt should be inserted and the Regional Office notified for assignment of a case number and Board agent. (For filing with the General Counsel see Sec. 102.72 of the Board's Rules and Regulations.)

11003 *What To File:* Forms (NLRB-502) for the filing of petitions are furnished by the Regional Offices.

Reasonably similar facsimiles are acceptable, but their use should be discouraged. The forms are self-explanatory with respect to the information called for. See Section 102.61 of the Rules and Regulations.

A minimum of an original and four copies of a petition should be filed.

11003.1 *RC or RD Petition:* In an RC or RD case the petition should be accompanied by petitioner's proof of interest or it must be supplied within 48 hours after filing or within such further time as the Regional Director may allow (but in no event later than the last day on which the petition might timely be filed). Proof of interest should be accompanied by an alphabetical list of names appearing on such interest. Where a petitioner desires an expedited election pursuant to Section 8(b)(7)(C), he/she must complete item 11c, as well as furnish all other applicable information called for by the form, but should not be *required* to fill out item 6b or 7a. (7b is inapplicable.) See Section 101.17 of the Board's Statements of Procedure.

11004 *Assignment of Case:* After a case has been docketed, it is assigned for investigation to a Board agent.

Assignments should be made with a view toward the most efficient and the most expeditious handling of cases. Among the factors that should be considered in the assignment of cases are the following:

a. Complexity of the case, relative to the respective skills of Board agents

b. Availability of Board agents immediate or prospective—state of commitments and travel plans

c. Respective workloads of Board agents

d. Location of the unit involved relative to cases presently assigned respective Board agents

e. Familiarity with case (e.g., because Board agent received petition initially or because agent has handled prior cases involving same employer).

Every effort should be made to assign a case so that an investigation can be begun immediately by the Board agent to whom the case will be ultimately assigned. Assignment to Board agents present in the office on the day of assignment will assist in the attainment of this goal. Alternatively, preliminary steps should be taken by someone in the office at the time of filing.

A case may be assigned to a Board agent who is out of town, by telephone or telegram, so that the agent may begin investigating immediately or make necessary arrangements for an early investigation.

11006 *Communications with Parties:* (Except where a party has designated an agent for exclusive service (see sec. 11008.7) the following instructions should be followed.) After a copy of the petition together with the initial communication has been served on the parties, and an attorney or other representative has entered an appearance on behalf of a party, copies of all further documents served pursuant to Section 102.111 of the Board's Rules and Regulations, with the exception of subpoenas, will be served on the attorney or representative of record in addition to the party. If a party is represented by more than one attorney or representative, service on any one of such persons in addition to the party satisfies the requirements of Section 102.111, but, as a matter of courtesy, an effort should be made to serve all counsel or representatives who have entered an appearance on behalf of the party. (See also sec. 11840.)

Copies should not be marked "courtesy" or otherwise distinguished from the original except as copies.

It should be particularly noted that copies of the following documents and communications should be sent to the party and to the attorney or representative of record:

a. Notices and orders issued in connection with unfair labor practice hearings, representation case hearings, and 10(k) hearings

b. Regional Directors' decisions, reports, and supplemental decisions

c. Dismissal letters in unfair labor practice cases and representation cases

d. Letters approving withdrawal requests of unfair labor practice charges or representation petitions

e. Closing compliance letters

f. Consent election agreements and stipulations for certification upon consent election

g. Representation case certifications.

Where arrangements for an election have been agreed to by the parties with full participation by counsel or representative, notices of election should be sent directly to the parties, with copies to counsel or representative. By the same token, the letter requesting the *Excelsior* list, which accompanies a copy of the approved consent or stipulated election agreement, may be sent to the employer, copy to counsel or representative. The *Excelsior* list supplied by the employer should be sent by the Region directly to the petitioning and intervening parties involved.

In addition, copies of correspondence that confirm some previously agreed-to arrangement or appointment may be sent to the parties involved.

Compliance communications are also covered by the foregoing instructions. However, after the requirements for compliance have been worked out and the respondent has advised us of its intention to comply, the notices that may be required, whether pursuant to a Board order, court decree, or settlement agreement, the request for certification of posting, and the instructions concerning details of compliance can be sent directly to the parties with copies to counsel or representative.

All other communications, both oral and written, should be with or through only the attorney or representative of record. However, whenever an attorney, representative, or party requests that copies of all written communications be sent to the party or has authorized that a party or person be contacted directly, such requests and/or authorizations should be honored.

Where special circumstances might warrant a departure from the foregoing instructions, clearance should be obtained from the Assistant General Counsel before undertaking any direct communication with a party contrary to these instructions.

11007 *Case Filing Docket:* All Regional, Subregional, and Resident Offices will maintain a daily case filing docket in a manner and location readily available for inspection and copying by members of the public.

Entries should be made on Form NLRB-4706, Case Filing Docket, for each case docketed; numerical sequence is not required but a separate sheet should be maintained for each day. Basic entries for each case are the name of the case, location, filing party, and case number.

INITIAL COMMUNICATIONS

11008 *Initial Communications:* Immediately upon the docketing of a petition, an acknowledgment of the filing is sent to the petitioner, and notification of the filing, along with a description of the bargaining unit alleged to be appropriate (a copy of the petition may be attached), is sent to the employer and all other interested parties. All parties should be advised of their right to be represented by counsel and should be sent a copy of Form NLRB-4701. All parties are given the name of the Board agent to whom the case has been assigned. Representation petitions should be served on all parties other than the petitioner by certified mail, return receipt requested. Petitions should be served on the petitioner by regular mail. (See sec. 11009, for initial letter to employer in RC case.)

11008.1 *Interested Parties:* Interested parties, for the purposes of this section, consist of the employer involved and all labor organizations and individuals who do claim or are believed to claim to represent any employees within the alleged unit and/or whose contractual interests would be affected by the disposition of the case. They include:

a. The petitioner

b. The employer, if other than the petitioner

c. The owner of a leased department in a case involving a discount department store or any other retail store where there are leased departments

d. Any individual or labor organization named in the petition as having an interest in or as being party to a currently existing or recently expired collective-bargaining contract covering any of the employees involved

e. Any labor organization that has notified the Regional Office by letter within the past 6 months that it represents employees of the employer involved, or is presently actively campaigning among employees of the employer

f. Any labor organization whose name appears as an interested party in any prior case involving the same employees that has closed within recent years.

If the interest of a party is not apparent at the outset, that party is notified of the proceeding, in the form and manner indicated above, as soon as the party's interest becomes apparent. *For purposes of initial communication, it is preferable to err on the side of considering a party to be interested rather than on the side of ignoring him.*

Blanket requests for notice of "all" petitions filed should not be honored.

11008.2 *Petitioner; Submission of Proof:* Petitioning individuals or labor organizations should be instructed to submit their proof of interest if they have not already done so within 48 hours after filing, but in no event later than the last day on which the petition might be timely filed (see Exception, infra), together with an alphabetical list of designations to facilitate the check of substantial interest; they should be told that in the absence of proof their petitions will be dismissed. Likewise, other interested individuals or labor organizations should be instructed to furnish their proof of interest within 48 hours. If they have not already done so, petitioning employers should be instructed to submit proof of demand for recognition by labor organizations and/or their evidence of objective considerations (*U.S. Gypsum Co.*, 157 NLRB 652 (1966)) within 48 hours. (See sec. 11042 et seq., re application of *U.S. Gypsum.*)

EXCEPTION: When a petition is filed involving the same employer involved in a pending CP (8(b)(7)) charge, the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.

11008.3 *Employer; Information Requested:* Employers should be requested to submit commerce information and a list of employees in the alleged appropriate unit, by job classification, for the payroll period immediately preceding the date of the initial letter. This letter should also advise the employer that, should an election be agreed to or directed, a list of names and addresses of the eligible voters must be filed with the Regional Director by the employer within 7 days after agreement or direction (sec. 11312). This eligibility list would be in addition to the proposed unit list.

In an appropriate situation, information concerning striking employees eligible to vote under Section 9(c)(3) should also be obtained from the employer and all other parties having the required information (sec. 11314).

11008.4 *All Parties; Information Requested:* All parties should be requested to submit to the Board agent copies of any presently existing or recently expired contracts covering any of the employees, as well as any correspondence bearing on the representation question. They should also be requested to notify the agent at once of any other interested parties who should be apprised of the proceedings. They should be advised that failure to disclose the existence of an interested party may affect the processing of the petition to a final conclusion.

11008.5 *Employees' Voting Rights:* Form NLRB-666, Notice to Employees, is sent to the employer with the initial communication that contains an explanation of the notice and a request that the employer post the notice. Posting of this notice by the employer is voluntary, not a requirement. The number of copies will depend on the size of the unit. Additional copies should be sent later, if needed.

Form NLRB-666 should be made available to the labor organization(s) involved, particularly when an employer does not post these notices. The maximum number of copies to be given to a labor organization should be limited to 5 copies or 1 copy for each 25 employees in the proposed unit. Use whichever provides the largest number of copies. Regional Directors have the authority to permit some variation in this maximum number if special circumstances appear to warrant it.

The reproduction of notices for wider distribution should be discouraged, pointing out the possibility of jeopardizing election results in all the circumstances. The leaflet "Your Government Conducts an Election for You on the Job" (Spanish edition available) contains significant "Rights of Employees." Copies are available for quantity distribution.

11008.6 *Right to Counsel and Notice of Appearance:* The initial letters to the parties should be accompanied by Forms NLRB-4812 and NLRB-4701. Form NLRB-4812 advises participants of the right to be represented by counsel and summarizes the Board's procedures with respect to the petition. Form NLRB-4701, Notice of Appearance, is for convenience of parties to notify the Agency of the name and address of counsel or other representative on their behalf. The form may be used at any stage of the case.

11008.7 *Designation of Representative as Agent for Service of Documents:* A party may designate the representative who has entered an appearance on his/her behalf in a Board proceeding as his/her agent for the exclusive service of all documents with certain limited exceptions.

Form NLRB-4813, the notice that the party must file to make the designation, should also be enclosed with the initial communication to the party. The notice *must be signed by the party.* In the event the party is a corporation or other form of business entity, the designation must be made by someone in an official capacity capable of binding the party. Regional Office personnel should not solicit execution of the designation.

When the form is filed, its terms will control the service thereafter. Only decisions directing an election, notice of an election, when so directed, and subpoenas will be served on the party. Copies of such documents served on the party subsequent to the initial petition, subpoenas excepted, will also be served on the representative. All other documents and written communications will be served only on the representative designated as agent. When forms are not filed, service will continue to be made in accordance with section 11006.

The designation, once filed, will remain valid until a revocation in writing is filed with the Regional Director. The designation, as well as any subsequent revocation, should be treated as part of the formal file in the same manner as Form NLRB-4701, Notice of Appearance. If the case is no longer under Regional Office control when such a designation or revocation is filed, the Region should immediately notify the division or office in Washington in which the case is pending.

11008.8 *Postal Service Cases; Representatives Authorized for Service of Certain Documents:* Postal Service representatives are designated agents of the Postal Service authorized to receive exclusive service of all charges and petitions. Service of charges and petitions should be made on these agents and constitutes service within the meaning of Section 102.114 of the Rules and Regulations. This designation shall remain valid until a written revocation of it, signed by an appropriate official of the U.S. Postal Service, is filed with the General Counsel.

11009 *Initial Letter to Employer in an RC Case:* On the filing of a petition, the Regional Office sends a copy thereof to the employer with a letter that calls attention to the employer's right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board. Normally the letter elicits or conveys the following information:

In the event the employer chooses to have a representative appear on his/her behalf, the employer is asked to have the representative complete an enclosed Notice of Appearance (Form NLRB-4701) and forward it promptly to the Regional Office. If the employer should also wish to designate the representative who will appear on his/her behalf, as agent for the service of documents, the employer must complete and sign an enclosed Notice of Designation of Representative as Agent for Service of Documents in Representation Proceedings (Form NLRB-4813) and forward it promptly to the Regional Office. The employer is usually requested to submit to the office as promptly as possible:

a. An attached commerce questionnaire filled out in the appropriate sections, if such information has not been submitted in prior cases

b. Copies of correspondence and existing or recently expired collective-bargaining contracts, if any, covering any of the employees in the unit alleged in the petition (names of any other labor organization claiming to represent any of the employees in the proposed unit are requested)

c. An alphabetized list of employees described in the petition, together with their job classifications for the payroll period immediately preceding the date of the letter

d. The employer's position as to the appropriateness of the unit described in the petition.

The employer is advised that, in the event an election is agreed to or directed, the Board requires that a list of names and addresses of all the eligible voters be filed by the employer with the Regional Director, who will in turn make it available to all parties to the case. He/she is advised that the list must be furnished to the Regional Director within 7 days of the direction of or agreement to election. The employer is advised early of this requirement so that there will be ample time to prepare for the eventuality that such a list may become necessary. (This list is in addition to the list of employees requested in the proposed unit by job classification in item (c) above.)

The letter normally explains that it has been our experience that, by the time a petition such as this has been filed, employees may have questions about what is going on and what may happen; and that, while at this point in the handling of the case we do not know what disposition will be made of the petition, experience tells us an explanation of rights, responsibilities, and Board procedures can be helpful to employees.

The employer is advised that the Board believes employees should have readily available information about their rights and the proper conduct of employee representation elections and that at the same time employers and unions should be apprised of their responsibilities to refrain from conduct that could impede employees' freedom of choice. Accordingly, the employer is requested to post an enclosed "Notice to Employees" in conspicuous places in areas where employees such as those described in the enclosed petition work, and to advise the Regional Director whether they have been posted. (Copies of this notice are made available to the labor organization(s) involved.) In the event an election is not conducted pursuant to the petition the employer is requested to remove the posted notice.

The employer is given the name and telephone number of the staff member to whom the case has been assigned and invited to communicate with that individual if the employer has any questions.

11010–11016 *Investigation Preceding Hearing or Election*

11010 *Preliminary Investigation:* The technique used in conducting representation case investigations does not lend itself to a set of hard-and-fast rules except that a complete investigation of a petition under Section 8(b)(7) must await a judgment as to the merits of the concurrent charge (see secs. 10240–10248, in the "Casehandling Manual, Part One, Unfair Labor Practice Proceedings," for special procedures pertaining to petitions processed under Sec. 8(b)(7)). In the usual case, however, the principal device, at least initially, should be telephone contact.

On receipt of the case, the Board agent should go over the petition and any accompanying papers and should check any prior related cases. With respect to any issues that may be anticipated on the basis of such examination, the Board agent should become familiar with the existing precedents. It should be ensured that there are no fatal defects on the face of the petition and that the petitioner has presented a showing of interest that is adequate (see sec. 11020) on the basis of its claim of the number of employees in the alleged appropriate unit.

The Board agent should make the first telephone calls regarding a petition as soon as possible after the filing of the petition. Although ordinarily such calls should not be made until sufficient time has passed for the parties to have received the initial letters concerning the petition, no more than 3 days should be allocated for such mail delivery and the Board agent should not delay telephone contacts beyond this 3-day period.

11010.1 *RC Cases:* In RC cases, usually, the first call should be made to the employer to procure commerce facts and the employer's information and position on various issues, and, if it appears that a directed election would be the probable result of formal proceedings, to ascertain whether there is any prospect of an election pursuant to a consent arrangement. Any intervenor is called for similar information.

11010.2 *RD and RM Cases:* In RD and RM cases, usually the interested individuals or labor organizations should be called first, and the same information, with the necessary alterations, is sought.

11010.3 *Announcement of Imminent Issuance of Notice of Hearing:* The Board agent should make every effort to circumvent attempts to delay giving the information sought in the initial telephone calls. The latter should accede to and should volunteer services in connection with other arrangements designed to transmit the information with reasonable promptness. If, however, it does not appear that the information can or will be furnished within a short period (circumstances of cases vary, but it is suggested that a 3-day period would normally fit this description) or if it appears that, at any rate, an election by consent is neither assured nor prospective, the Board agent should, in the initial contacts, prepare the parties for issuance of a notice of hearing, unless dismissal is clearly indicated.

Explaining, if necessary, the need for expedition and giving assurance that the step is without prejudice to the parties furnishing the requested material or their entry into a consent election arrangement, the Board agent should inform the parties that the notice will probably issue in the next day or two. The agent should fix an early date for hearing before contacting the parties and check with them as to acceptability of such date.

If, on the other hand, initial contacts indicate that a consent arrangement within a short period is likely, the Board agent should condition announcement of the imminent issuance of notice of hearing on a breakdown of consent negotiations.

11010.4 *Where No Question Concerning Representation Is Apparent:* Neither hearing nor consent election possibilities should be explored if it appears, on initial contacts, that no representation question affecting commerce exists. If it is *clear* that, unless future investigation alters the picture, the Board will not assert jurisdiction, the petitioner has insufficient interest (see secs. 11020–11034), the unit sought is inappropriate, the petition is not timely filed, or, for any other reason, the case would ultimately be dismissed, the petitioner should be made aware of this. If no further facts are available, a withdrawal request should be solicited (see sec. 11100); if there are additional sources of information, they should be followed up. (See sec. 11016 for factors to be considered.)

11010.5 *Determination of Whether QCR Exists:* In most cases, the regional determination as to the future course of the case can be made on the basis of the initial investigation. Prior to issuance of a notice of hearing or solicitation of a consent agreement, the case in question must meet the test: *Is there reasonable cause to believe that a question of representation affecting commerce exists?*

11012 *Followup:* The issuance of a notice of hearing does not signal the end of the investigation. Prior to a hearing itself (or, for that matter, prior to the approval of an election agreement or to a dismissal) the basic facts with respect to each potential issue should have been procured.

In making the followup, attempts should be made to arrive at a firm commitment regarding a consent election and to have the agreement executed early enough to notify the reporter in order to avoid unnecessary expense under the contract with the reporting service.

This continued investigation, when feasible, should be based mainly on further telephone contacts and correspondence. Where necessary, the exhaustive use of all investigative devices will be necessary, including extended correspondence, field trips, and/or joint conferences of the parties; but it is anticipated that these usually will not be required.

All information elicited in the investigation should be incorporated into the case file.

11012.1 *Lack of Cooperation:* Failure of petitioner to make available necessary facts that are in his/her possession may result in prompt dismissal. Failure of other parties to furnish information on a given point should lead to acceptance of credible information available on that point, unless it flies in the face of the total picture.

Consideration may also be given to the issuance of prehearing subpoenas (see sec. 11770.2).

11014 *Amendments to Petition:* The petitioner on his/her own initiative, and irrespective of developments in the pending investigation, may add to or delete from the original or last amended petition.

Assistance to the extent permitted in connection with original petition (see sec. 11001) may be rendered in connection with the filing of such amendments.

In a petition that goes to formal hearing, the unit description should conform to that being eventually sought. See *Atlantic Richfield Co.*, 208

NLRB 142 (1974), wherein the Board permitted a substantial amendment of the petition during the hearing at the discretion of the hearing officer. In such cases, regional personnel responsible for handling the case should apprise the petitioner of this fact.

With respect to the amendment of petitions after issuance of notice of hearing, see sec. 11140.1.

A petition is amended by typing "Amended" (or "Second Amended," "Third Amended," etc.) before the word "Petition" in the regular petition form and by rewriting the contents of the petition to include the desired changes. An amendment merely referring to the existing petition and stating what is being added to or dropped from the petition should not be used.

Whenever amended petitions are filed, all interested parties should be notified of the amendment.

An amendment filed after the dismissal of a petition should be docketed as a *new* petition, no matter how titled, and assigned a new number.

11016 *Priority of Issues:* No attempt will be made here to cover the existing law governing representation cases. The following recital of usual issues and avenues of exploration, while not all inclusive, may be used for guidance. It is suggested that the named factors usually should be considered in the order used:

a. Errors on face of the petition (If correctable by amendment, see sec. 11014.)

b. Petitioner's status as labor organization

c. Jurisdiction (See sec. 11700–11714.)

d. Sufficiency of petitioner's interest (see sec. 11022), or employer's objective considerations (See sec. 11042.)

e. Timeliness of petition: Section 9(c)(3); certification year; contract bar; recent valid recognition

f. Circumstances of raising of the representation question

g. Intervenors: Status as labor organization; sufficiency of interests (See sec. 11022.)

h. Bargaining unit problems.

11020–11034 *Showing of Interest*

(Not applicable in petitions in which expedited 8(b)(7) procedures are warranted—see Sec. 101.23 of Statements of Procedure.)

11020 *In General:* The requirement as to adequacy of interest on the part of labor organizations initiating or seeking participation in an R case helps to avoid unnecessary expenditure of time and funds, where there is no reasonable assurance that a genuine representation question exists, and prevents persons with little or no stake in a bargaining unit from abusing the Agency's machinery and interfering with the normal administration of the Act.

The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Board. While any information offered by any party bearing on the validity of the evidence offered in support of an asserted interest should be received, weighed, and, if appropriate, acted on, there is no *right* in any such party to litigate the subject, either directly or collaterally. (See sec. 11028.4.)

11022 *What Constitutes Adequate Showing:* The evidence of a union's interest that will entitle it to initiate or to participate in an R case may take one of a number of forms.

11022.1 *RC, RM, and RD Cases:* A union will be regarded as satisfying the showing requirement as petitioner in an RC case or as an intervenor in any RC, RM, or RD case if

a. It is the certified or currently recognized bargaining agent of the employees involved.

b. It is the union-party to a currently effective or recently expired exclusive bargaining contract covering the employees involved in whole or in part.

11022.2 *RM Cases:* A union will be regarded as a claimant in an RM case if it is the union or one of the unions on the basis of whose majority claim the employer filed the instant petition.

11022.3 *Degree of Participation:* A union will be entitled to the degree of participation indicated below on the basis of evidence indicating that it has been designated as bargaining agent by employees in the bargaining unit. (Such evidence may take the form of a signed, dated certificate by an authorized person, usually a union official, that the named individuals are members in good standing; or it may take the form of signed, dated "authorization" cards or petitions designating the union as the signers' agent for collective-bargaining purposes.)

a. Petitioner's interest: A petitioner, in order to justify further proceedings on its petition, must demonstrate designation by at least 30 percent of the employees in the unit it claims appropriate. Section 101.18 of Statements of Procedure indicates that the figure may be lowered where there are "special factors"; clearance should be obtained from the Board through the Office of the Executive Secretary prior to any relaxation of the 30-percent rule.

   In a strike situation, the petitioner ordinarily must make a showing of 30 percent of the normal complement of employees. (The normal complement would ordinarily be the complement enjoyed at the time the strike occurred.) Such showing may be made among the strikers, nonstrikers, replacements, or any combination thereof.

b. Cross-petitioner's interest: A union, in order to urge the adoption of an appropriate unit differing in substance from that claimed appropriate by a union-petitioner or the employer involved, must demonstrate designation by at least 30 percent of the employees in the unit thus urged. *Boeing Airplane Co.*, 86 NLRB 368 (1949); *Forstmann Woolen Co.*, 108 NLRB 1439 (1954).

c. "Full" intervenor's interest: A union that seeks to intervene on the basis of a showing of designation by at least 10 percent of the employees in any unit claimed appropriate by a petitioner, cross-petitioner, or involved employer may "block" any consent election in such unit; and it may participate fully in any hearing thereon. Cf. *Corn Products Refining Co.*, 87 NLRB 187 (1949).

d. "Participating" intervenor's interest: A union that seeks to intervene on a timely showing of less than 10 percent (it may be only one or two designations) in any unit may not "block" a consent election in such unit.

However, it should be accorded a place on the ballot under the terms agreed on by the other parties. If a hearing is held it may participate fully. *Fostoria, Ohio, Works of the National Carbide Division, Union Carbide & Carbon Corp.*, 89 NLRB 460 (1950).

11024 *Procurement of Information*

11024.1 *Petitioning Union:* In the event petitioner does not submit evidence of representation on filing the petition, it must supply such evidence within 48 hours after filing the petition but in no event later than the last day on which the petition might be timely filed. (Statements of Procedure, Sec. 101.17.)

If petitioner's evidence of interest is found to be less than 30 percent of the employees in the unit as disclosed by a check of the employer's list of unit employees, a reasonable time to cure the deficiency may be given at the Regional Director's discretion where warranted by the circumstances. However, in no event will the time to submit such additional evidence of representation be later than the last day on which the petition might be timely filed.

11024.2 *Intervening Union:* An intervening union should have submitted its evidence of interest at the time of its assertion of interest or within 48 hours of a request therefor.

But see *United Boat Service Corp.*, 55 NLRB 671 (1944); also *Lufkin Foundry & Machine Co.*, 83 NLRB 768 (1949).

11024.3 *Designations; Date Stamp:* All evidence of designation, whether in the form of cards or petitions, should be date-stamped on the reverse side when received at the Regional Office. In addition, all undated cards or petitions should be stamped "UNDATED" in the space where the date would ordinarily appear.

11024.4 *Employer:* A payroll list covering the employees in the alleged appropriate unit will have been requested of the employer in the initial communication.

The request should be repeated in other contacts; the employer should be told, if necessary, that absent submission of a list (a) the number of employees estimated by the petitioner as comprising the alleged appropriate bargaining unit will be assumed to be accurate, and (b) those designating the union as their bargaining agent will be assumed to be among those employed in the unit.

Only *one* copy of the list should be solicited.

As the case develops and other unit contentions are made, the employer should be asked for a list of employees in each such unit. Often, of course, the employer need only supplement the original list by the appropriate information.

The payroll list(s) should be of those employees as of a date about the time of filing of the petition. This is particularly true of seasonal industries.

In striker eligibility situations, the payroll list(s) as of the date of the commencement of the strike, and as of all other dates on which additional employees joined the strike, should also be obtained (sec. 11314).

11026 *Late-Filed Evidence of Interest:* As indicated, a union's evidence of interest should be filed at the time of filing or intervention (whichever applies) or within the period prescribed by the Region. (See sec. 11024.1–11024.4, above.)

11026.1 *Petitioner:* If a petitioner's evidence is not timely received, action should be initiated toward disposition of the case by dismissal, but if the evidence is received prior to the actual dismissal and is otherwise timely, it may be accepted. A submission of evidence of interest after dismissal should not be accepted in support of the petition in question.

11026.2 *Intervenor:* Upon failure of a claiming intervenor to submit interest within the time allowed, it should thereupon be regarded as having no interest. It is recognized, however, that subsequent submissions or additions may be made, and such late-filed evidence should be given the limited consideration specified below.

a. If evidence of an intervenor's showing is submitted after the 48-hour period has expired *but before a consent election agreement is approved or before a hearing has terminated* (whichever applies), the submitting union may thereafter be treated as a party to the extent warranted by its interest (see sec. 11022.3). *North American Aviation, Inc.*, 109 NLRB 269 (1954).

b. If the 48-hour notice has been given, and the union involved has nevertheless failed to submit an intervenor's interest *until after a consent election agreement has been approved or after a hearing has terminated* (whichever applies), the submitting union will *not* be permitted to participate in further proceedings. It may, however, be added to the ballot in a consent election if the signatories to the agreement agree that it may participate without regard to the timeliness of showing. *Sprague Electric Co.*, 81 NLRB 410 (1949).

c. If no preconsent or prehearing notice was ever given to a union—say, because its interest in the situation was unknown—its intervention should be permitted after approval of a consent agreement or after the close of a hearing (whichever applies) only to the extent that its evidence of interest *does not postdate* the approval of the agreement or the close of the hearing, respectively. If the interest predates the event, the union should be accorded the same treatment as a union that timely submitted the same degree of interest. If the interest does not predate the event, the union should not be permitted to intervene; except that it may be added to the ballot in a consent election if the signatories to the agreement agree to such participation without regard to the timeliness of showing. *Mayfair Industries, Inc.*, 126 NLRB 223 (1960).

A cross-petition, for purposes of this section, will be treated in the same fashion as a request to intervene.

11028 *Validity of Interest Evidence:* The evidence of designation is checked against the list of employees in each alleged appropriate unit to see whether the tests set down in section 11022.3 are met. Although authorization cards should be examined on their face (to check, for example, against signatures in the same handwriting), their validity should be presumed unless called into question by the presentation of objective considerations.

The authorization must run *to* the party submitting it in support of its interest. While this requirement should be liberally construed—authorizations running to "AFL" should be accepted as designating AFL–CIO, authorizations running to a parent federation should be accepted on behalf of an international, authorizations running to the international should be accepted on behalf of a local of the international, and vice versa— designations in *blank* are not acceptable. Also, where the submitting party has, since a card was signed, changed its *affiliation* from that appearing on the record, it should be rejected. (A reasonable time may be given for submitting re-signed cards.)

11028.1 *Possible Forgeries; Investigation:* If it appears that signatures are in the same handwriting, or if a party alleges and furnishes evidence that there are forgeries, such investigation should be made as is necessary and suitable action taken, including possible referral to other law enforcement agencies.

The investigation should include, but not be limited to, attempts to obtain affidavits from the person or persons responsible for procuring and submitting the cards. A signature comparison should be made preferably against the employer's records. Persons purporting to have been signators should be questioned.

As a general proposition, this section should be construed narrowly, and W-4 forms (or other documents) should not be accepted routinely for checking against signatures on the authorization cards, absent objective considerations that provide a reasonable basis for believing the showing of interest was obtained through fraud or forgery.

11028.2 *Showing Believed To Be Fraudulent; Procedure:* If it is established that reasonable grounds exist for believing any part of the showing to be fraudulent, suitable action should be taken, including possible referral to other law enforcement agencies.

a. If the remaining *valid* showing falls below the required amount (30 percent, 10 percent, etc.), the petition or intervention based on the showing should be dismissed or denied, as the case may be, in the absence of withdrawal or disclaimer. The stated ground should be that the evidence of interest submitted "was of questionable authenticity."

b. If the remaining *valid* showing satisfies the interest requirement, but if an officer or responsible agent of the union was responsible for or had knowledge of and condoned submission of the fraudulent cards, casehandling advice should be requested of the Board through the Office of the Executive Secretary.

c. A letter should be sent to the union involved (with a copy to its international, if petitioner is a local) advising it of the question as to the authenticity of the authorization cards. The letter will also set forth the provisions of Section 1001, Title 18, of the U.S. Code, which reads as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

d. The questioned cards should not be returned.

e. A memorandum reporting the results of the investigation, including the Regional Director's recommendation, should be submitted to the Division of Operations Management. If the Division of Operations Management agrees as to the merit of the charge, the matter, including all circumstances, should be reported to the office of the United States Attorney, which has jurisdiction, and full cooperation should be rendered that office. Contacts should be made or confirmed in writing, and the Division of Operations Management should be kept informed of developments.

11028.3 *Unions Suspected of Fraud:* Where a union has in prior cases submitted evidence of interest of questionable authenticity, the Board agent assigned to the case shall investigate fully the authenticity of the submitted evidence of interest in support of the union's petition. The investigation shall include, if possible, a check against signatures on file with the employer. If such check reveals evidence of fraud, the steps described in section 11028.2 should be followed.

11028.4 *Evidence of Fraud Sought To Be Introduced at Hearing:* If evidence of fraud is sought to be introduced at the hearing, the line of questioning should not be permitted. The party desiring to present such evidence should be advised on the record to bring it administratively to the attention of the Regional Director within 5 working days from that date; the hearing should *not* be interrupted.

Thereafter, if such evidence is presented to the Regional Director, the investigation should be conducted expeditiously and a report forwarded to the Division of Operations Management. In a case that has been transferred to the Board, the Office of the Executive Secretary should be notified immediately and be kept advised of all developments. If, at the expiration of the period, no such evidence has been presented, the Division of Operations Management and the Office of the Executive Secretary should be advised of this fact.

If the issue is not raised at the hearing or within 5 working days after its close, no investigation will be made, unless special circumstances exist. *John Pratto & Frank Pratto d/b/a Globe Iron Foundry*, 112 NLRB 1200 (1955).

11028.5 *Date of Authorization Essential:* Only those signatures *that are dated* may be used for the purpose of investigating interest. (One date for a page of signators to an "authorization" petition is satisfactory.) No independent proof of the date of signing should be solicited or accepted.

Undated cards may be returned on request, but the same cards should not be accepted as valid if subsequently dated and resubmitted. (Such cards will have been date-stamped and stamped "UNDATED.")

This does not mean, however, that cards that had been properly signed and dated originally may not be resubmitted in the same or another case.

The last statement should not be taken to imply that, in all cases, the *age* of the card will be immaterial. For example, where a union's disclaimer of interest or withdrawal request in a prior case has resulted in action "with six months' prejudice to the filing of a new petition" by the union, it must show a *current* interest in support of any petition it files after the period has expired. In other cases, the *currency* of interest will depend on the applicable Board law, which this manual does not purport to cover. Proper reporting (see sec. 11032) will assure that the Regional Director or the Board is administratively advised of the dates on the cards.

If, on the other hand, a comparison of the prior date stamp on a resubmitted card and the date inserted on the card reveals that the date on the card could not be the date of signing, the card should be rejected.

11030 *Check of Interest:* The *valid* evidence of interest of each labor organization should be checked against the payroll list for each unit involved. Only valid evidence of interest should be counted in the check.

11030.1 *If No Payroll List Submitted by Employer:* If no payroll list has been submitted, the estimate made by the affected union should be used as the number involved and each signer of authorization material should be considered to be employed within the unit claimed.

For procedure to follow when a list is submitted for the first time *at a hearing*, see section 11195.

11030.2 *Full Check:* If a list has been submitted, prior to hearing, that contains under 300 names, an actual, full check should be made. The name of each "designator" should be checked against each name on a payroll list. In checking, the payroll list and/or the alphabetized list submitted by the union should be so marked that, between them, there will be a permanent work record of the check. (The authorization cards are returned to the respective unions.) The work record should show the names found on both lists and the date of signature, by month, date, and year.

11030.3 *Spot Check:* With larger lists, *spot* checks may be made. Spot checks involve checking something less than every name on the union's interest showing (e.g., every 3rd, 5th, or 10th one) against the employer's list. The sample checked should be large enough to afford validity; it should involve the *actual* check of at least 300 different names on the employer's list and, in any event, of at least 1 out of every 10 on the employer's list. Also, care must be exercised to ensure that the sample is a *random* one.

11030.4 *Separate Checks for Each Unit Involved:* A check should be made for each claimed bargaining unit involved. Thus, separate checks would be made for a petitioner-sought production and maintenance unit including truckdrivers and factory clericals, but excluding gang leaders, "other" supervisory employees, and timekeepers, *and* for an employer-claimed production and maintenance unit, including gang leaders and timekeepers, but excluding truckdrivers, factory clericals, and supervisors, even though the two alleged units substantially overlap. Subsequent rechecks should be made if unit positions change; when such rechecks—or, for that matter, when the original checks—indicate that the showing of the petitioner or cross-petitioner is so close to the borderline (30 percent) that an adverse finding by the Regional Director or the Board, however slight, may result in the need for additional showing of interest, the petitioner or cross-petitioner should be advised of the possibility and, in the interest of expedition, should be instructed to submit whatever additional cards it may possess.

11030.5 *Enlarged Unit; Supplemental Proof of Interest:* When the Regional Director or the Board directs an election in a unit larger than that requested by the petitioner and the direction of election is conditioned on the petitioner making an adequate showing of interest, the additional evidence of interest submitted by the union need not predate the close of the hearing and may postdate the decision. The union may be given a reasonable period of time to procure the additional showing of interest, normally 14 days or such further time as the Regional Director may allow. (See Rules, Sec. 102.111.)

11032 *Report:* Form NLRB-4069 has been devised for use in reporting the results of the investigation of interest. The blanks to be filled in are self-explanatory. The report should be prepared in duplicate, one copy to be forwarded to the Regional Director or to the Board as the case may be with the hearing officer's report, and the other to be retained in the file.

Where more than one report is prepared (e.g., where, because of changing unit contentions, the original report became obsolete) the subsequent report(s) should be labeled "Amended" (or "Second Amended," etc.) or "Revised"; and a copy of each should accompany the hearing officer's report.

The report should set forth, among other things, the efforts made to secure a payroll list, if none was submitted.

11034 *Ultimate Disposition of Cards/Payroll: Rejected* evidence of interest that is not controversial may be returned at any time (of course, it has been date-stamped upon receipt). All other evidence of interest should be retained until after the petition has been withdrawn or dismissed, or until a certification of a bargaining agent or of election results has been issued. Upon request by the labor organization involved, after photocopies have been made, the evidence of interest may be returned at an earlier point, provided that there is no foreseeable issue involving such evidence and on the condition that it will be resubmitted on request.

NOTE: Once an FOIA request for employee cards has been received, the cards must be retained by the Agency until all litigation under the FOIA has been concluded. (See G.C. Memorandum 88-13.) Thus, the cards may not be returned to the union at the close of the representation case if an FOIA request or court action is still pending. The necessity of retaining the cards applies both while the FOIA request is before the Board or the FOIA action is before a district court or subject to appeal from a court ruling. Questions on this matter should be addressed to the Assistant General Counsel for Special Litigation.

The alphabetical list accompanying the evidence should not be returned.

Payroll lists submitted in connection with investigations of showing should be retained in the file. The one exception: Where an employer has agreed to submit a list only on the condition that it is returned or is destroyed *when the case is closed*; however, if the list is returned, it should be so marked that it could not be used to ascertain which employees had designated any labor organization as their bargaining agent.

11042–11044 *Objective Considerations (RM Cases)*

11042 *Petition Based on Objective Considerations:* "In petitioning the Board for an election the continued majority of a previously certified incumbent union, an employer, in addition to showing the union's claim for continued recognition, must demonstrate by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status since its certification." *(U.S. Gypsum Co.*, 157 NLRB 652 (1966).)

The Regional Director may process the petition based on a prima facie showing of objective considerations.

The question of objective considerations, like the showing of interest in an RC or RD case, is a matter for the administrative determination of the Regional Director and may not be litigated at the hearing.

The following procedures should be applied in all RM cases involving a *single incumbent union, whether certified or recognized.*

11042.1 *Submission of Objective Considerations:* The RM petition must be supported by a letter, statement, affidavit, or other signed document setting forth the objective considerations on which the employer relies in requesting an election.

11042.2 *Supporting Document Not Submitted with the Petition:* If the supporting document does not accompany the petition, the Board's *U.S. Gypsum* decision should immediately be called to the petitioner's attention and the petitioner should be instructed to submit a statement of his/her objective considerations within 48 hours. (See secs. 11008.2 and 11024.1.)

11042.3 *If the Information Is Deficient:* If the information first submitted by the employer does not meet *U.S. Gypsum* requirements, the employer may be given 48 hours from the time of being advised of such deficiency to present the necessary evidence.

Reasonable extensions may be granted at the discretion of the Regional Director when warranted by the circumstances.

11042.4 *Investigation of the Validity of the Objective Considerations:* No investigation should be made of the validity of the objective considerations, except in the context of a blocking 8(a)(1) and/or 8(a)(5) charge, and this is the preferred procedure. However, if in the judgment of the Regional Director unusual circumstances warrant a separate, administrative inquiry, such investigation as is necessary may be undertaken.

11042.5 *Sufficiency of the Objective Considerations:* In weighing the sufficiency of the objective considerations, it is important to keep in mind that it is not the fact of the union's majority status that is in question, but whether the employer has reasonable cause to believe that the union has lost its majority status.

11042.6 *Information Submitted by the Employer:* The information submitted by the employer-petitioner must be specific and detailed; for example, names must be named. The names must be kept confidential, as is the case with the showing of interest in an RC or RD case.

The extent of disaffection is not to be divulged to the union. For example, the employer submits that certain (named) employees out of "X" number in the unit have advised that they no longer wish the incumbent union to represent them; the union may be told only that a sufficient number of employees have advised the employer, etc.

11042.7 *If the U.S. Gypsum Requirements Are Satisfied:* If the Regional Director is administratively satisfied that, on its face, the information submitted by the employer meets the *U.S. Gypsum* requirements, the petition should be processed in accordance with normal procedures. Absent a consent election agreement, notice of hearing should issue, if appropriate.

The document(s) setting forth the employer's objective considerations should be attached to the hearing officer's report if such case is transferred to the Board.

11042.8 *If the U.S. Gypsum Requirements Are Not Satisfied:* If, in the judgment of the Regional Director, the employer-petitioner has not satisfied the requirements of *U.S. Gypsum*, the petiton should be administratively dismissed.

11042.9 *Submission to Washington for Advice:* Cases presenting the *U.S. Gypsum* issue should be submitted to the Board through the Office of the Executive Secretary, for advice, if a question not covered by the preceding instructions is raised or there is doubt as to the sufficiency of the objective considerations.

11050–11056 *No-Raiding Procedures*

11050 *Generally:* There is a program established within the AFL–CIO for handling of representation disputes between affiliates of the AFL–CIO.

Within certain limitations, the Board's procedures make allowances for and give weight to this program.

11052 *AFL–CIO No-Raiding Procedure:* This program arises out of an agreement originally designed to discourage an organizational attack by a (former) constituent of one federation on the established bargaining relationship enjoyed by a (former) constituent of the other federation. The program continued following the 1955 merger of the AFL and the CIO, and has been, since 1962, applicable to all affiliates as part of the AFL–CIO constitution (now as art. XX).

11052.1 *Procedure in Representation Cases Involving Raiding:* In all R cases in which, among the parties, there are at least two affiliates of the AFL–CIO, one of which has an "established bargaining relationship" (i.e., has been recognized by the employer for at least 1 year or is certified by the Board or by a state board as collective-bargaining agent for the employees involved), the following procedure will apply:

a. Immediate notification of the filing of the petition setting forth the parties involved should be sent to:

Lane Kirkland, President
AFL–CIO
815 16th Street, N.W.
Washington, D.C. 20006

Copies of the notification should be sent to all parties, to the presidents of the parent international unions involved, and to the Executive Secretary. Names and addresses of the international presidents are to be found in the "List of Organizations Affiliated With the American Federation of Labor-Congress of Industrial Organizations," made separately available to each NLRB field office.

b. The customary nonformal investigation should be completed. If the investigation reveals that there is no basis for proceeding on the petition, the petition should be promptly dismissed, absent withdrawal, in accordance with regular procedures. (In such case, the persons named above should be notified of the action.)

c. In all cases in which the *petitioner* is an AFL–CIO affiliate, formal action should be delayed for a 30-day period if necessary, from the date of notification to the persons named above to permit use of the settlement provisions of the agreement.

If the no-raiding machinery has been invoked, but its operation is not completed within 30 days, the Office of the Executive Secretary should be consulted before further action is taken on the case. In any case in which the Region has not been notified, at the end of the 30-day period, of what action has been taken under the no-raiding procedure, the Region should promptly consult the Office of the Executive Secretary to obtain advice as to whether to continue processing the petition or to defer it for some additional period. Except in extraordinary circumstances, unless an active proceeding under the no-raid agreement has been initiated, processing of the petition will be reactivated at that time.

d. If the petitioner is not an affiliate of the AFL–CIO, the Regional Director may nevertheless, using discretion, delay formal action as above, including but not limited to those situations where the petitioner voluntarily requests a delay to permit operation of the no-raiding machinery.

e. On occasion, a 30-day letter will not have been sent because, in the opinion of the Regional Director, article XX may not be involved (e.g., one AFL–CIO union argues that a new plant is an accretion to its established bargaining unit). In such cases, if a complaint is filed with the AFL–CIO under article XX, and if article XX arguably applies, the Board will usually honor a timely request to suspend processing of the case to permit operation of the no-raiding machinery. In this connection, it is important to understand that neither the Board nor the Regional Director decides whether article XX applies, nor do they enforce decisions of the impartial umpire. The Board's normal policy, of course, is to approve timely requests for withdrawal of a petition. Thus, the Agency avoids unnecessary case-processing effort by allowing time for operation of the no-raid machinery, which may result in withdrawal of the petition.

f. In any case where investigation discloses that an affiliate of the AFL–CIO, though declining participation as a party in the case, is claiming that it has an "established bargaining relationship" covering the employees involved, the Regional Director shall so advise the Executive Secretary and seek his/her advice about whether the procedures set forth in this section shall be applied to that case.

11056 *Other No-Raiding Agreements:* Occasionally a Regional Director will be requested to suspend processing of a case to permit operation of no-raiding agreements other than that discussed in section 11052. In such cases, a request for advice should be submitted to the Office of the Executive Secretary (in writing or by telegram or telephone, as time permits) for consideration by the Board. Such a request for advice should be accompanied by a copy of the no-raiding agreement, if available, or, at a minimum, a description of the agreement. The request should also include as full information as possible of the status of any pending proceeding under the applicable no-raiding agreement. It is the Board's policy to follow the same procedures with respect to such agreements as it does with respect to the AFL–CIO no-raiding agreement in cases where it appears that their operation holds similar promise of resolving representation disputes among the parties to such agreements. Because of the diversity in such agreements, however, the request for advice procedure outlined above is necessary in order that the Board may be fully apprised of the nature of the particular agreement and able to determine whether it is appropriate to invoke a 30-day suspension of formal processing or to proceed in some other manner.

11080–11112 *Regional Determination*

(See secs. 10240–10248.7 for regional determination in 8(b)(7) cases.)

11080 *Generally:* At a very early point, normally within 7 days after the receipt of the petition, a regional determination should be made as to the future course of the case. The responsibility for making such a decision rests with the Regional Director.

11080.1 *Investigation Report: It is expected that written reports (and analyses in R cases) will be brief and pointed.* The use of forms and checklists is to be encouraged and, in such reports and analyses as are prepared, repetition should be avoided by references to file memos and documents in the case file. Of course the file should be complete.

Some matters to be considered for coverage in the case file are:

a. Jurisdictional facts

b. Pertinent labor relations history

c. Facts surrounding the raising of the representation question

d. Pertinent correspondence and agreements, and an analysis thereof

e. Facts with respect to interest showing, including a recital of efforts made to procure an employer's list of those in the unit

f. Discussion of unit, including the parties' position thereon

g. In a striker eligibility situation under Section 9(c)(3), all pertinent data, including date of commencement of the strike, number of employees, etc.

h. Recital of efforts to secure informal resolution

i. Recommendations, and basis therefor, of each regional representative involved in the case

j. In a case involving a series of significant actions over a period of time, there should be a short calendar of events. Finally, the names of parties to be served or notified should be prominently displayed.

k. Each case file should also contain a flow chart showing the dates of all contacts with the parties, who made each such contact, and why no election agreement was reached.

11080.2 *Responsibility Fixed:* While Board agents engage in initial dealings and propose appropriate case disposition to the parties, the ultimate responsibility for the action taken is the Regional Director's, who must approve any consent election agreement, issue any notice of hearing, and approve any withdrawal request, or dismiss, as the case may be.

11080.3 *Regional Committee Meeting:* On recommendation of the supervisor, or on own volition, the Regional Director may decide that a case (because of importance, novelty, or doubt) requires a regional committee meeting in addition to the written material described above. In this case, a procedure such as that discussed in section 10112, Part One, of this manual, should be followed.

11080.4 *Determination of Action To Be Taken:* The regional action may take the form of requiring additional investigation, issuing a notice of hearing, approving a consent election agreement, dismissing the case, or approving a withdrawal request.

For request for advice from Washington, see section 11754. Also, it must be determined whether, at any point, action must be suspended. See *Concurrent R and C cases,* section 11730, and *AFL-CIO No-Raiding Procedure,* section 11052.

11082 *Notice of Hearing:* If appropriate, a notice of hearing (Form NLRB-852) to be held before a hearing officer, at a time and place fixed therein, should be issued.

11082.1 *Service of Notice:* Copies of the notice, to which are attached copies of the petition or last amendment, should be served by certified mail. One copy of Form NLRB-4669 should be attached to each copy of the notice of hearing served on the parties. Registered mail may be used in those instances where there is an advantage to that form of mail service, but such use should be very infrequent and the exception to the normal means of service.

Service should be made on the employer and union(s) involved (and petitioner if other than employer or union) and other interested parties (see sec. 11022.3). If the case involves a discount department store or other retail store in which there are leased departments, the owner of the leased departments should be served with notice of hearing and should be permitted to intervene in the proceedings, and should be accorded full rights as an intervenor.

The term "interested parties" as here used does *not* include labor organizations that, upon request, have not presented any evidence of interest; copies of the notice of hearing need not be sent to such organizations.

11082.2 *Continued Attempt To Obtain Consent Agreement:* Accompanying the notice of hearing, but not attached thereto, should be Form NLRB-4338 with the names and addresses of the parties appearing thereon. This form advises the parties that it is still possible to settle the matter by agreement and contains instructions for requesting postponement.

The parties should be made to understand that the issuance of notice of hearing does not foreclose the possibility of a consent election agreement.

At the same time, they should be advised with respect to the procedures to be taken if a postponement is necessary. Both purposes can be accomplished by the inclusion of Form NLRB-4338 to accompany each notice of hearing served.

11082.3 *Selection of Date:* If the parties have agreed on a reasonably prompt date, their desires should be taken into consideration by the Regional Director, along with the needs of that office and Agency goals of expedition. Consultation with the parties is not required, however, and any early date may be selected that fits into the regional schedule. Agents should obtain supervisory clearance before setting a hearing date more than 18 days after the petition is filed, and clearance by the assistant to the Regional Director and/or the Regional Director should be obtained before scheduling a hearing more than 21 days after the petition is filed.

No minimum notice requirement has been established in representation cases, but it has been found to be administratively helpful to provide for at least a 5-day notice. In unusual circumstances, the Regional Director may permit less than 5 days' notice, or notice of hearing may be waived by the parties, if the waiver is written and clear.

Where the parties at a joint conference in the field agree to an immediate or short hearing date and waive formal notice, the hearing may be conducted by the Board agent on the same field trip, if necessary reporting arrangements can be made.

11082.4 *Telegraphic Notice:* The Region may, where necessity indicates, make advance announcement of the issuance of notice of hearing by telegram. The telegram should always be followed up by the formal notice.

11082.5 *Place of Hearing:* The place fixed for hearing will depend upon circumstances. When possible, subject to the availability of witnesses, hearings should be set to be held at Regional and Subregional Office cities, even though the plant is some distance away.

11082.6 *Withdrawal of Notice:* If, at any time after issuance (but prior to the close of a hearing), it appears that a notice of hearing should be withdrawn (for example, see sec. 11110.2), the withdrawal should be effected by order of the regional director served on all interested parties (see *Communications with Parties*, sec. 10026, Part One). By agreement of the parties, the withdrawal of notice of hearing is accomplished by and takes effect upon the regional director's approval of a consent election agreement (see sec. 11094). Where appropriate, an order withdrawing notice of hearing should be combined with notice of the approval of a request for withdrawal of the petition or with notification of dismissal of the petition. In the latter case, the same "appeal" rights should be included as set forth in section 11100.2.

11084–11098 *Consent Election Agreements*

11084 *Generally:* Since the ultimate device employed by the Board in resolving a valid question concerning representation is the election by secret ballot, the *voluntary adjustment* of a representation case is based on a consent election agreement (Form NLRB-651) or stipulated election agreement (Form NLRB-652). Under either, the parties agree that an election be conducted by the Regional Director.

11084.1 *Difference Between Agreement and Stipulation:* The basic difference between the agreement and the stipulation is that questions that arise in connection with the election are eventually determined by the Regional Director in an agreement and by the Board in a stipulation. However, even with respect to the stipulation, disputes arising prior to the issuance of the tally of ballots are resolved by the Regional Director.

11084.2 *Efforts To Obtain Consent Election:* Efforts to dispose of a case by a consent election should begin almost at the outset of investigation. In the course of the first contacts with parties, the alternative of disposition by consent election should be noted and the parties' positions thereon obtained. Thereafter—unless it becomes clear that the Regional Director or the Board, under the circumstances, would not direct an election—the parties should be kept aware of the existence of the procedure. They should be affirmatively informed of the fact that the Regional Office stands ready to cooperate in this respect, even though a notice of hearing issues. The supervisors, and if necessary the assistant to the Regional Director or another member of management, should be aware of all problems encountered by the Board agent in the efforts to secure an election agreement and should be involved in those efforts where appropriate.

A consent election under terms contrary to the statute should be neither solicited nor approved.

Thus, if the Board would not assert jurisdiction, there may be no consent agreement; likewise the Region must not conduct a consent election covering a unit that would be found inappropriate notwithstanding the consent of the parties. If the parties desire a consent election, however, and the Board would arguably assert jurisdiction or find the unit appropriate, the Regional Director may approve an agreement for consent election (Form NLRB-651).

11084.3 *Details of Agreement and Election Arrangements:* Agreement on principle that a consent election will be held is explored and determined most often by telephonic communication with the parties; meeting of minds on details and actual execution of the instrument is usually accomplished in a joint conference of the parties. All details must be agreed on. Failure of accord in such details as date, hours, or place of election will serve to send a matter to hearing rather than consent. However—and this is particularly apt where the agreement is reached at a hearing and the hearing officer is not the agent who will conduct the election—the parties may leave such matter "to be designated by the Regional Director," in which case, although substantially guided by the informally ascertained desires of the parties on such matters, the Regional Director may unilaterally fix the date, hours, or place.

On the other hand, the determination of bargaining unit disagreements should not, in the document, be left "to the Regional Director."

The parties should clearly set forth in full the agreed unit. Nor should approval normally be given either in the document or otherwise to any agreement of the parties that certain categories of employees should eventually be included or excluded by means of the challenge procedure. However, in determining whether to recommend approval of an election agreement where a number of challenges to eligibles may be involved, the following factors may be considered as militating in favor of approval: A strike is in progress or there is a genuine threat of a strike that the parties wish to avoid; the potential challenged ballots represent a class situation that could be disposed of as a single issue in a postelection proceeding; and questions of eligibility will probably not be resolved in a preelection hearing because of substantial credibility issues.

Norris-Thermador agreements (see *Norris-Thermador Corp.*, 119 NLRB 1301 (1958)) should be solicited, but the suggestion that such an agreement be entered into should not be permitted to interfere with obtaining an election agreement where it is clear that a party wishes to preserve its privilege to challenge some voters.

The same may be said with respect to questions of voting eligibility. Normally, the Region should not place its imprimatur on a "consent" proceeding in which it is known in advance the voting status of a substantial group of employees (e.g., a group of persons who have been laid off) will be relegated to the challenge procedure.

At the time of execution of the agreement, the Board agent must ascertain whether a strike exists. Also, at the time of execution of the agreement, election arrangements, such as payroll check, observers, and equipment to be furnished, should be discussed. Every effort should be made to assure that none of the parties misunderstand or have any mental reservations.

11086 *Preparation of Document:* The blank spaces to be filled in the agreement and the stipulation are, generally, self-explanatory.

11086.1 *Name(s) of Labor Organization(s):* The correct and complete name(s) of the labor organization(s) must be inserted in the paragraph headed "Wording on the Ballot." If a "shortened" name is requested it must be shown *in addition to* the full name and must be in parentheses. If use of a shortened name might confuse or confound the employees and the union insists on its use, the agreement should not be approved and the case should be sent down for hearing.

11086.2 *Commerce Facts:* Although the agreement form does not call for the insertion of commerce facts, such facts must appear in the case file. The stipulation form does require sufficient commerce facts on which the Board may make a jurisdictional finding. Where gross volume of business is the sole test for asserting jurisdiction, include commerce data in the case file (in agreement cases) or on the stipulation form regarding inflow, outflow, franchise, etc., sufficient to establish *de minimis* statutory jurisdiction.

11086.3 *Place on Ballot; Payroll Period; Time and Place; Unit:* Places on the ballot should be based on agreement, if there is agreement; on chance, if there is none. (With respect to severance elections in which only the group for which severance is being sought will vote, see sec. 11090.1.)

The payroll period for eligibility should be designated as "the period ending," etc. Normally, it should be a period ending shortly before the agreement on a consent election.

The time and place of election should be inserted or should be expressly left to the Regional Director.

The unit should be accurately described.

11086.4 *Addresses of Parties in Stipulation:* The addresses of parties should appear in the stipulation, since these operate as the basis for service of papers thereafter.

11088 *Parties:* Necessary parties to a consent election agreement are the employer and any union (or person acting as a bargaining representative, or in an RD case the petitioner) that has submitted evidence of an interest in accordance with sections 11022.1, 11022.2, and 11022.3, a-c.

A union that has submitted evidence of less than a 10-percent interest in the unit involved (see sec. 11022.3, d) may not "block" a consent agreement. It may, however, be a party to the agreement and participate in the election if it wishes to do so. If it does not wish to be a party, an express waiver and disclaimer should be sought; at the least a confirming letter should be sought by the Regional Office.

A union that has disclaimer interest may neither block nor be a party to a consent agreement.

11090 *Variations:* Except under exceptional circumstances, the language of the printed agreement and the stipulation constitute the only terms under which consent elections may be held.

11090.1 *Self-Determination Elections:* In consent self-determination elections, whether on a craft, department, or other basis, the wording in the agreement should be made to conform to Board practices in directed elections.

a. *Severance elections:* In an organized plant, where a union seeks to *sever* part of an established unit, the procedure will depend, to an extent, on whether, simultaneously, the existing (production/maintenance) group is also being balloted. If both elections are being held simultaneously, the following wording is appropriate:

> If the employees in Group B [the severance group] cast a majority of valid ballots for [name the union seeking severance], they will be taken to have indicated their desire to constitute a separate bargaining unit; if they do not cast a majority of valid ballots for [any such union], they shall remain a part of the existing unit and their ballots shall be pooled with and counted among the employees in Group A [the existing production/maintenance unit].

Where only the severance group is being balloted, the wording of the agreement depends on whether or not the production/maintenance union appears on the ballot. If so:

> If a majority cast valid ballots for [union seeking severance; if more than one, name them in the disjunctive], they will be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representatives will be issued with respect to such unit. If not, these employees shall remain a part of the existing unit and a certification of results of election to such effect will be issued.
>
> (In providing for choices on the ballot only the names of the competing unions should appear. "Neither" and "none" should not appear.)

If only the union or unions desiring severance are on the ballot, *because the production/maintenance union does not wish a place on the ballot*, the wording will be as follows:

> If a majority cast valid ballots for ["Yes," if there is only one union on the ballot; substitute names of severance-seeking unions if there are more than one], they will be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representatives will be issued with respect to such unit. If not, these employees shall remain a part of the existing unit and a certification of results of election to such effect will be issued.
>
> (In providing for choices on the ballot, there should be "Yes" or "No," if only one union is on the ballot. Otherwise, only the names of competing unions should appear; "neither" and "none" should not appear.)

b. *Professional elections:* With respect to elections involving the ascertainment of the desires of *professional* employees as to their inclusion in a single unit with nonprofessional employees, paragraph 9 describing the wording of choices on the ballot should be altered to conform to the following:

Two questions shall appear on the ballot:

1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?

To which the choice of answers shall be "Yes" or "No."

2. By which union, if any, do you desire to be represented?

In answer to which the choices on the ballot will appear in the wording indicated below and in the order indicated below (from left to right) (from top to bottom):

First:

Second:

Third:

Fourth:

When only a single professional employee is entitled to a self-determination election with respect to inclusion in a unit with nonprofessionals, the professional employee shall be furnished two ballots: one on inclusion and the other on representation. The ballot of the professional shall be addressed first, in the following manner: if the vote is for inclusion, the second ballot is to be mixed, unopened, with the regular ballots; if the vote is against inclusion, the second ballot shall be destroyed without being opened.

c. *Residual elections:* In a partially organized plant, a group of unrepresented employees is referred to as a "fringe" or "residual" group of employees. The language to be added to agreements will vary from case to case depending on the number of unions involved and whether or not elections will be conducted in more than one voting group. Some, but not all, of the numerous possibilities are as follows:

1. *One voting group—one union:* This is commonly referred to as an *Armour-Globe* election, if the union is the incumbent representative of employees in a partially organized plant and seeks to add a group of unrepresented employees to its existing unit. In such event, the following language should be added to the agreement:

> If a majority of valid ballots are cast for the incumbent union, they will be taken to have indicated the employees' desire to be included in the existing [fill in description] unit currently represented by [the incumbent union]. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

2. *One voting group—two unions:* This is a combination *Armour-Globe* and residual unit election. The single voting group consists of the unrepresented employees in a partially organized plant. One union, the incumbent, seeks to add the group of unrepresented employees to its existing unit, *and* a second union seeks to represent the unrepresented group as a separate residual unit. The employees have alternative choices and the following language should therefore be added to the agreement:

> If a majority of valid ballots are cast for the incumbent union, they will be taken to have indicated the employees' desire to be included in the existing unit currently represented by (the incumbent union). If a majority of valid ballots are cast for the union seeking to represent them separately, they will be taken to have indicated the employees' desire to be represented in a separate unit. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented. In any event, appropriate certification will be issued.

3. *Two voting groups—two unions:* In a partially organized plant, where an incumbent union seeks only an election in the existing unit, *and* where a second union seeks an overall unit consisting of employees in the existing unit plus a residual group of unrepresented employees, two voting groups should be established and the following language should be added to the agreement:

> If a majority of valid ballots are cast for the incumbent union, separate units are appropriate. If a majority of the employees in the existing unit do not select the incumbent, then the two voting groups shall be combined in a single overall unit and their votes shall be pooled. In either event, the appropriate certification will be issued.

If the votes are pooled, they are to be tallied in the following manner (see *Penn-Keystone Realty Corp.*, 191 NLRB 800 (1971)): The votes for the incumbent union shall be counted as valid votes, but neither for nor against the second union that is seeking the more comprehensive unit. All other votes are to be accorded their face value, whether for representation by the second union or for no union. In the event that the results show that a majority of the valid ballots have not been cast either for the union that is seeking the more comprehensive unit or against representation, the election will be deemed to be inconclusive, and a second election will be conducted among the employees in the broader unit in which they will vote as to whether or not they desire to be represented by the union seeking that unit.

11092 *Time of Execution*

11092.1 *Prior to Opening of Hearing:* Where a consent election agreement has been achieved prior to issuance of notice of hearing, no special problems are involved. No notice will thereafter be issued, unless, subsequently, the consent arrangement "breaks down" and the case reverts to its preagreement status.

Where notice of hearing has already issued, the approval of the agreement or stipulation serves as a withdrawal of the notice. No specific order of withdrawal is necessary.

11092.2 *During Hearing:* Where the hearing has opened, it may, of course, be recessed for consent election discussions. If a consent election agreement is reached, the hearing should be adjourned indefinitely. Thereafter, the approval of the agreement will serve as a withdrawal of the notice of hearing.

11092.3 *After Close of Hearing; Not Transferred to Board:* Where an agreement or stipulation is reached after a hearing has closed and where the case has *not* been transferred to the Board, the Regional Director may approve and proceed with the terms of the agreement without notification to the Board and without issuance of any formal order.

11092.4 *After Close of Hearing and Transfer to Board:* Where agreement or stipulation is reached after a hearing has closed, and the case has been transferred to the Board, the Regional Director immediately, and before approval of the agreement, notifies the Board. The Regional Director may approve and proceed with the terms of the agreement after the Board has issued an order referring the case back to the Regional Director for disposition pursuant to the consent adjustment reached.

11094 *Approval:* Approval of the consent election agreement or stipulation should be recommended on the face of the instrument by the Board agent who procured it.

A consent election agreement must be approved by the Regional Director before it is effective.

Parties should be notified of the approval and should be given a conformed copy of the agreement. The letter of notification should—if this has not already been done—confirm election arrangements previously made.

The Regional Director retains authority to revoke his/her approval, for cause, at any time before the election. For example, if after review of the *Excelsior* list (*Excelsior Underware*, 156 NLRB 1236 (1966)), the number or nature of challenges raised are so extensive as to cause serious questions concerning the intent or understanding of the parties, such challenges may be the basis for revoking approval.

11096 *Preelection Rulings:* The Regional Director should rule on all requests or motions of the parties made subsequent to approval of an election agreement. His/her rulings in connection with an agreement are final; his/her rulings in connection with a stipulation are reviewable, if promptly appealed to the Board.

11098 *Withdrawal from Election Agreements:* This item deals with attempts to withdraw from an agreement for consent election or from a stipulation for certification upon consent election, thereby nullifying same, but with an intent to leave the petition on file and enter into a different election agreement or to go to hearing. See section

11098.1 for withdrawal from the ballot; sections 11110–11118 for withdrawal of petition; and sections 11120–11124 for disclaimer of interest.

Until an election agreement has been approved, any party may withdraw from (or insist upon changes in) the agreement. But once an election agreement has been approved, a party may withdraw therefrom only upon affirmative showing of unusual circumstances or by agreement of all parties. *Sunnyvale Medical Clinic*, 241 NLRB 1156 (1979). Normally, all parties should be held to their agreement to hold an election. Should any party seek to withdraw from an election agreement, for the purpose of entering into a new agreement on different terms, or going to hearing, the request should be considered in the light of the cause shown, the position of the other parties, and the timeliness of the request. As a general policy, discretion should be exercised in the direction of effectuation of the election agreement.

11098.1 *Withdrawal from Ballot after Election Agreement:* If, in a multiple-union situation, the employer's consent is conditioned on the presence of more than one union on the ballot, the Regional Director may approve an employer request to delete from the printed agreement of stipulation the following phrase: "If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect."

In the event this phrase is deleted, a subsequent attempted withdrawal from the ballot by one union will, *if approved*, result in vitiating the agreement unless the remaining parties desire to enter into a new agreement. Accordingly, such withdrawal requests should not be granted absent unusual circumstances (see sec. 11098), unless the remaining parties agree.

As indicated in section 11098, a union-petitioner should be held to its election agreement in one-union situations, absent unusual circumstances, unless it wishes to withdraw from the ballot in a multiple-union situation, however, and allow the election to go forward, such a request may be freely approved if time permits, if the intervenor has or can obtain within a reasonable period of time a sufficient showing of interest, and if the phrase noted above has not been deleted from the agreement. If time does not permit making the necessary changes in the ballot and notice of election, and the intervenor has or obtains an adequate showing of interest, the election should be held as scheduled with the petitioner on the ballot. Whether or not time permits making the necessary changes, and the intervenor does not have or cannot obtain within a reasonable period of time a sufficient showing of interest, the union-petitioner's request should be treated as a request to withdraw its petition (see sec. 11114.1). If time does permit, and the intervenor does have or obtains an adequate showing of interest, and the phrase has been deleted from the agreement, then the employer's position must be taken into account (see secs. 11098 and 11098.1, par. two).

Should an intervening union (with or without a blocking interest) that has entered into an election agreement thereafter seek to withdraw from the ballot and from the situation entirely, the request (which should contain a disclaimer of interest) should be granted unless shortness of time makes the act administratively impossible. *American Meter Co., Inc.*, 89 NLRB 401 (1950). If the phrase noted above has been deleted from the election agreement, however, the position of the employer must be taken into account by the Regional Director in deciding whether to approve the intervenor's request (see secs. 11098 and 11098.1, par. two).

11100-11118 *Dismissal or Withdrawal*

11100 *Generally:* Where, from the investigation, it clearly appears that an election would not be directed, a withdrawal request should be solicited of the petitioner. Thus, a case should not proceed to consent, or to hearing, if the Board would not assert jurisdiction, if the unit involved is inappropriate, etc. (But see sec. 11084.2.)

A reasonably short period should be given for requesting withdrawal, in the absence of which, at the end of the period, the petition should be dismissed.

The Board agent should prepare and place in the file Form NLRB-4865, Statement of Reasons for Proposed Dismissal or Approval of Withdrawal in Representation Cases.

11100.1 *Basis for Dismissal:* Dismissals, refusals to institute formal proceedings, should be based on specific grounds.

11100.2 *Notification to Parties:* The petitioner should be notified in writing of the dismissal and the reason therefor. The letter should instruct how and when a request for review of the action can be filed with the Board. Form NLRB-4916, Instructions for Filing Request for Review of Administrative Dismissal of Representation Petition, should be enclosed with the dismissal letter.

Carbon copies of the dismissal letter should be sent to all other interested parties.

11100.3 *Regional Director's Authority During Review Period:* The Regional Director retains complete authority during the 14-day review period or until a request for review is filed, whichever period of time is shorter, to revoke his dismissal action. (See Rules, Sec. 102.69.) If a withdrawal request is received or if the Regional Director determines to reconsider his action during the period in which a dismissal is being reviewed by the Board, the Regional Director may revoke his/her dismissal and take appropriate action, having first cleared with the Office of the Executive Secretary.

11102 *Pattern 2, Dismissal Letter*

Petitioner

Re: Case name
Case number

Gentlemen:

The above-captioned case, petitioning for an investigation and determination of representatives under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that, because [it would not effectuate the purposes of the Act to assert jurisdiction herein/the petitioner has failed to submit evidence of designation as bargaining agent of a substantial number of employees involved/the unit of employees for which petitioner seeks to act as bargaining agent (seeks decertification) is inappropriate for collective-bargaining purposes/etc.], further proceedings are not warranted at this time. I am, therefore, dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, including the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) should be filed with the Board by close of business (month-day-year), except that the Board may, upon good cause shown, grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Board in Washington, and a copy of any such request for extension of time should be submitted to me and to the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on me and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/Regional Director

cc: Parties, Board

(See sec. 10248.4, Pattern 73, for dismissal of petition under Sec. 8(b)(7).)

11104 *Regional Action on Request for Review:* On receipt of a copy of the request for review, the file should be forwarded promptly to the Office of Executive Secretary. Care should be taken to assure that the file is complete and that all memoranda and reports are accurate and legible.

11104.1 *Regional Transmittal Memorandum and Followup:* Any points raised in connection with the request for review should be given consideration. In his/her transmittal memorandum, the Regional Director should give his/her appraisal of the points made—unless they have already been fully considered, in which case he/she should simply say so—and should note the present position of regional personnel who worked on the case.

During the period in which the file is being reviewed, the Region should transmit to the Board any new information, developments, or recommendations.

11104.2 *Reason for Dismissal Noncompliance:* Where the reason for dismissal was noncompliance with a refusal-to-bargain judgment, a full report from the Regional Director in support of the noncompliance determination should be submitted to the Board when the Regional Office file is forwarded for review. Specifically, this applies to a representation petition dismissed because of the failure of an employer or union to comply with a final court action enforcing a Board 8(a)(5) or 8(b)(3) order, respectively.

As used here, final court action means the entry of the judgment by the circuit court of denial of any petition for certiorari that may be filed with the Supreme Court, whichever comes later.

11104.3 *Request for Review Sustained:* A sustaining of the request for review restores the status of the case as it existed prior to the dismissal. Notice of hearing should be issued, or other appropriate action taken.

11110 *Withdrawal of Petition:* When a withdrawal request is submitted at the suggestion of a Board agent to whom the case is assigned (which suggestion is motivated by the fact that further proceedings are unwarranted—in other words, where absent a withdrawal, the petition will be dismissed), approval of the request should be recommended by the Board agent, with the notation that the withdrawal was solicited.

The Regional Director will take such action as is appropriate. If the withdrawal request is approved, the parties should be notified.

In addition to withdrawal requests that may be solicited by the Region, there may be those that the petitioner, on his/her own volition, may submit. The reasons for the action may vary from "does not wish to proceed" to any one of an infinite number of explanations. The reason, if not given in the request, must be sought.

11110.1 *Generally:* The Regional Director's general policy should favor the effectuation of a petitioner's genuine voluntary desire to drop the proceeding. This applies to RC, RM, and RD cases. Presumably, if the moving party does not wish to proceed, the Act contains adequate machinery for use by other parties.

However, should the petitioner's withdrawal request be accompanied by other action with which it is inconsistent, for example, should there be a strike or picketing for recognition by the union-petitioner, the withdrawal request should be denied. In addition, if the Regional Director believes that approval of the withdrawal request would result in a situation that would run counter to the purposes of the Act, he/she may, and should, withhold approval.

11112 *Withdrawal Before Close of Hearing or Before Approval of Election Agreement:* Where a request is received prior to close of any hearing or before the approval of any election agreement, the request should be granted *without prejudice* to the subsequent filing of a new petition by the petitioner, which in all other respects is appropriate. (The notification of approval of the withdrawal request should appear in an order withdrawing notice of hearing, if one has issued.) This applies to RC, RM, and RD cases.

11114 *Withdrawal After Close of Hearing or After Approval of Election Agreement, But Before Election:* Requests for withdrawals of petitions in RC, RM, and RD cases shall be ruled on by the Regional Director, except in those cases where the withdrawal request is received after transferral of the case to the Board. If the case is before the Board, notify the Board so that it can take appropriate action.

11114.1 *In an RC Case:*

a. *Petitioner Sole Union Involved:* Where, after the approval of an agreement or stipulation, or the close of a hearing, but before the holding of the election, the petitioning union, the sole union involved, requests timely withdrawal of its petition, the request should be granted with 6 months' prejudice to the filing of a new petition and the election should be canceled. This should be done whether or not the employer opposes the action. *Sears, Roebuck & Co.*, 107 NLRB 716 (1954).

   EXCEPTION: If the union's request is accompanied by action inconsistent with its request, such as striking or picketing for recognition, the request should not be granted, with or without prejudice, and the election should be conducted pursuant to the election agreement *(Waumbec Dyeing & Finishing Co.*, 101 NLRB 1069 (1952)), or an appropriate decision should issue.

b. *Intervenor Desires Election:* Where a petitioning union seeks to withdraw the petition after approval of election agreement or close of hearing, and there is an intervening union that desires the election be held or an appropriate decision be issued, the latter must submit a recent contract or 30-percent interest showing in the unit involved. The 30-percent interest showing need not antedate the approval of the agreement or the close of a hearing, and a reasonable period for procuring and submitting the interest may be given. On proper submission by the intervenor, the petitioner may be dropped from the ballot (but see sec. 11098.1), and the election, with the intervenor alone on the ballot, should be held in accordance with the agreement or an appropriate decision should issue.

   In the event no election is held as the result of a subsequent withdrawal on the part of the intervenor, the rule of 6 months' prejudice to the filing of a new petition, unless good cause is shown, should be applied to both the petitioner and the intervenor.

   Except where an election agreement has been modified in the manner specified in section 11098.1, paragraph one, a request to withdraw petition may be approved, if otherwise appropriate, whether or not the employer opposes the action.

11114.2 *In an RM Case: Employer-Petitioner:* A timely withdrawal request filed by the employer-petitioner after the approval of an election agreement or close of hearing, but prior to the election, should be approved and granted without prejudice if any union involved (other than a certified incumbent union) does not oppose the move. If opposition is expressed by such a union, the election should be held as scheduled or decision issue if the union opposed to withdrawal has a petitioner's showing of interest. If this union does not have petitioner's showing of interest, seek advice from the Board through the Office of Executive Secretary.

11114.3 *In an RD Case:* A timely withdrawal request filed by the RD petitioner after the approval of an election agreement or close of hearing should be approved and granted without prejudice. If an intervenor (other than a certified incumbent union), however, desires an election, and has, or can obtain within a reasonable period, a petitioner's showing of interest, the election should be held as scheduled or decision should issue.

11114.4 *Where Election Directed in Substantially Different Unit:* The withdrawal in any case is *without prejudice* if the petitioner seeks to withdraw after the Regional Director or the Board has directed an election in a unit substantially different from that sought by the petitioner.

11116 *Withdrawal of Petition After Election:* A withdrawal request submitted subsequent to a valid election may be ruled on by the Regional Director whether the election was conducted by agreement of the parties or was directed by the Board or the Regional Director. Normally, the withdrawal request should not be approved if it appears that the intent of the withdrawal is to circumvent the intent of Section 9(c)(3). If the circumstances are such that the Regional Director believes the withdrawal request should be approved, clearance should be obtained from the Board through the Office of Executive Secretary.

11116.1 *Withdrawal of Objections to Permit Filing of New Petition:* A request to withdraw the petition, submitted while objections are pending, should normally not be approved (see sec. 11116). However, the Regional Director may approve withdrawal of *objections* if, because of the passage of time, petitioner seeks to allow the election results to become final. This action is *without prejudice* to the filing of a new petition timely under Section 9(c)(3) based on a new showing of interest.

11116.2 *Withdrawal of Petition After Election Set Aside:* A withdrawal request submitted after the election has been set aside on the basis of the petitioner's objections should, absent extraordinary circumstances, be approved by the Regional Director *without prejudice.*

11118 *Petitions Filed Within Prejudice Period:* Action may be taken on the basis of a disclaimer of interest or an attempted withdrawal, which will carry the condition that:

> Any petition filed by [the affected union] within 6 months [of the action] will not be entertained unless good cause is shown to the contrary . . . .

The initial determination whether there is good cause to entertain the new petition rests with the Regional Director. If the Regional Director determines that good cause does exist, and further proceedings are warranted in all other respects, he/she should issue a notice of hearing, and the issue will be one of those to be placed in the record at a hearing; if the Regional Director determines that it does not exist, he/she should dismiss (absent a withdrawal), and the petitioner may test the issue, if it wishes, by means of a request for review to the Board.

11118.1 *Good Cause:* What constitutes sufficient good cause to warrant entertaining a new petition filed prior to the expiration of the 6-month prejudice period may not be stated comprehensively; it depends on each individual case. The following circumstances illustrate what the Board considers good cause: Where the original disclaimer or withdrawal was made because of contraction of the unit, or expansion of the unit; or because of a pending charge on which a complaint has now issued. (Of course, in the latter case, a request to proceed is required.)

Another good cause for entertaining a petition is the voluntary agreement of the employer to a consent election in the new proceeding. The initiative in seeking and obtaining such agreement should be taken by the petitioner and not by the Regional Director. Thus, if, on the filing of the new petition, the petitioner advises the Region that the employer is willing to consent to an election, the Board agent should confirm this with the employer; on confirmation, the Regional Director may approve a consent election agreement.

11118.2 *Intervention During Prejudice Period:* It should be noted that even though a union may be prevented from filing a petition during a given period in the absence of good cause, it may nevertheless intervene during such period in any R case filed by another and may participate to the extent of its showing of interest (sec. 11022.3). *California Furniture Shops, Ltd.*, 115 NLRB 1399 (1956).

11118.3 *Showing of Interest After Close of Prejudice Period:* Where a petitioner files a new petition after the close of the "prejudice period," a current 30 percent is required as evidence of interest.

DISCLAIMER OF INTEREST

11120–11124 *Disclaimer of Interest*

11120 *Disclaimer of Interest:* As indicated earlier, a union normally achieves status as an interested party in a representation case only by affirmative action—the submission of proof of interest. In certain situations, however, affirmative action on the part of a union is necessary in order to establish that it is *not* a party in interest.

If a union with an outstanding certification or with a still effective contract covering all or some of the employees involved in an RC case seeks to *avoid* participation in the instant case (i.e., disclaims any present interest in the affected employees) it does so by filing a *disclaimer of interest.*

There is no special form for a disclaimer. In general, it should state that the disclaiming union waives and disclaims any right to represent (described) employees (or "employees involved in Case . . .").

On request, conformed copies of a disclaimer may be furnished other parties in the case.

11122 *Effect of Disclaimer in RC Cases:* Whenever possible, the disclaimer should be procured in writing. Furthermore, a disclaimer must not be accompanied by action that is inconsistent therewith, such as simultaneously striking or picketing for recognition or seeking to press grievances. With respect to the existence of such inconsistent action, other parties should be contacted.

If the disclaimer is in writing, and there is no inconsistent action, the union may thereafter be disregarded as a party. If either of these elements is missing, a notice of hearing, if a hearing is to be held, should be sent to the union; but a consent election agreement may be consummated without the participation or acquiescence of the disclaiming union.

If the disclaimer of interest is by a previously certified union, the dismissal (or approval of withdrawal) should contain a revocation of the prior certification.

11124 *Dismissal of RM and RD Cases, on Disclaimer of Interest:* This item deals with procedures for dismissing RM and RD cases, if the filing party does not withdraw the petition after a disclaimer is filed.

11124.1 *In an RM Case:* Where the union on the basis of whose claim the petition was filed submits a disclaimer of interest, the petition (unless it is withdrawn) should be dismissed. The ground stated for dismissal should be ". . . the union on the basis of whose claim the petition was filed has filed a disclaimer of interest in the affected employees. . . ." If the disclaimer of interest is by a previously certified union, the dismissal (or approval of withdrawal) should contain a revocation of the prior certification.

The disclaimer must not be accompanied by action that is inconsistent therewith. Thus, if the union is simultaneously striking or picketing for recognition, the disclaimer should not serve as a basis for dismissal. With respect to the existence of such potential inconsistent action, the other parties should be contacted before any dismissal action is taken.

A disclaimer filed prior to the execution and approval of a consent election agreement or the opening of a hearing should result in a dismissal (unless there is a withdrawal) without prejudice to any of the parties. Should a notice of hearing have issued, the order of dismissal and of withdrawal of notice should be consolidated. Should the hearing have opened, and a disclaimer be filed during the hearing, the hearing officer should communicate with the Regional Director. If it is decided, on the above principles, that the case should be dismissed, the hearing should be adjourned indefinitely; and the order of dismissal should contain a withdrawal of notice of hearing.

If the disclaimer is filed after the execution (and approval) of a consent election agreement or the close of the hearing, the dismissal (in the former case by the Regional Director and in the latter by the Regional Director or the Board) will be accompanied by the following statement:

> Any petition filed by [the union] within 6 months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event [the union] makes a claim for recognition upon the employer within 6 months from this date, a motion by [the employer] requesting reinstatement of this petition will be entertained.

Campos Dairy Products, Ltd., 107 NLRB 715 (1954).

11124.2 *In an RD Case:* Similarly, in an RD case, a disclaimer, unaccompanied by inconsistent action, will result in a dismissal, absent withdrawal. As in an RM case, the dismissal resulting from a disclaimer filed prior to approval of a consent election agreement or opening of hearing should be unqualified; a regional dismissal because of a disclaimer filed during the hearing will likewise be unqualified; and a dismissal based on a disclaimer filed after the approval of a consent election agreement (or after the close of hearing) will be thus qualified, by the Region or by the Board, as the case may be. *Little Rock Road Machinery Co.*, 107 NLRB 715 (1954):

> Any petition filed by [the union] within 6 months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event the union makes a claim for recognition upon [the employer] within 6 months from this date, a motion by the petitioner herein requesting reinstatement of this petition will be entertained.

Where the Regional Director dismisses an RD case or approves a withdrawal request on the basis of a disclaimer by the union involved (at whatever stage), the dismissal (or the order approving withdrawal) should contain a revocation of any prior certification.

11124.3 *Good Cause:* No investigation of the good cause referred to in the several statements quoted above should be made at the time of the disclaimer. Such investigation, if at all, should be made on the filing of a new petition by the affected union. (For a discussion of what constitutes good cause, see sec. 11118.1.)

11124.4 *Intervenor Desires Election:* If a disclaimer is filed in any situation after the close of hearing or approval of an election agreement, and an intervenor wants an election held or appropriate decision issued, it must submit a 30-percent showing of interest. This showing need not antedate the approval of the agreement or the close of the hearing, and a reasonable period for procuring and submitting the interest may be given. On proper submission by the intervenor, the disclaiming union may be dropped from the ballot (but see secs. 11098.1 and 11122) or the proceeding, and the election, with the intervenor alone on the ballot, should be held in accordance with the agreement, or an appropriate decision should issue.

In the event no election is held as the result of a subsequent withdrawal on the part of the intervenor, the rule of 6 months' prejudice to the filing of a new petition, unless good cause is shown, should be applied to both the disclaiming union and the intervenor.

11140–11148 *Prehearing Procedures*

11140 *Generally:* Prior to the opening of a hearing, the Regional Director retains authority to amend the notice of hearing by changing the date, places, or hour of hearing; or by consolidating for hearing the instant case and any other case, whether or not notice of hearing has thus far issued in that case. Authority to withdraw the notice of hearing and, if appropriate, to dismiss the petition remains with the Regional Director unless he/she transfers the case to the Board. The Regional Director may act in these respects on his/her own initiative or on motion or request by any party.

11140.1 *Petition Amended Subsequent to Notice of Hearing:* If a petition is amended subsequent to the issuance of notice of hearing but prior to the opening of the hearing, the Regional Director should amend the notice of hearing accordingly, unless the nature of the amendments calls for some other action.

11140.2 *Prehearing Motions:* The Regional Director has authority to rule on any prehearing motions filed by the parties, including motions to intervene. With respect to such motions, however, the Regional Director may refer them to the hearing officer for ruling at the hearing. The Regional Director should advise the parties in writing of his/her action.

11140.3 *Subpoenas:* The Regional Director has the authority and the obligation to issue on application of any party subpoenas returnable at a hearing. Case name, number, and whether the subpoena is returnable before an administrative law judge or hearing officer should be entered on all subpoenas before they are issued to any party. The Regional Director also may rule on petitions to revoke subpoenas or refer these to the hearing officer. But, since time may be of the essence in such matters, the Regional Director may wish to rule on the petitions personally. Reference to the hearing officer should be by order referring to hearing officer served on the parties.

11142 *Postponements:* The general policy of the Regional Director should be that cases set for hearing will be heard on the day set, and that postponements will be granted only for good cause shown. Every effort should be made to acquaint parties in the Region and, particularly, parties in a given case of this fact and of the procedure to be followed in seeking a postponement.

(Form NLRB-4338, with instructions for requesting postponements and with the names and addresses of the parties appearing thereon, should accompany each notice of hearing. Where this was not done because the date scheduled had been the subject of prior agreement, any party seeking postponement should be apprised of the proper procedure.)

11142.1 *Request:* Postponement of the opening date of a hearing is initiated by request, or motion, for postponement by the party seeking it. The request should be in writing; original and two copies served on the Regional Director and copies served on each of the other parties. The request should contain *detailed* cause (i.e., not merely "prior commitments") and should contain suggested date(s) for resetting. Finally, except in emergency situations, it should have been filed at least 3 days before the date then set for hearing.

The requesting party must ascertain in advance, and set forth in the request, the positions of all other parties to the proceeding. Where appropriate, the request may be a joint one.

11142.2 *Ruling on Request:* The Regional Director rules on the request for postponement. Whenever possible, the Regional Director should wait until other parties will have had the opportunity of making known their positions, perhaps until after mail delivery on the day following. Then, the Regional Director should issue his/her ruling, serving a copy on each party. The order should appear on the printed order rescheduling hearing (Form NLRB-859) or should be "tailored" to fit the situation. (With respect to Board proceedings, postponements, rescheduling, continuing, and adjourning are used interchangeably.)

11142.3 *Action Subsequent to Postponement:* Normally, postponements are to a day certain. They may, if demanded by circumstances, be *indefinite* (*sine die*) (e.g., in the event of "live" consent election negotiations). Subsequently, further action should be taken with respect to such postponements: The hearing should be rescheduled by means of a formal order; or the notice of hearing should be withdrawn upon approval of a withdrawal request. Approval of a consent election agreement withdraws the notice of hearing.

11144 *Motions:* All prehearing motions should be filed with the Regional Director. They should be in writing, and an original and two copies should be filed. Simultaneously, a copy should be served on each of the other parties to the proceeding. All motions should briefly state the order or relief sought and the grounds therefor.

As indicated earlier, the Regional Director may rule on the motion, in which case copies of the ruling are served on the parties or he/she may refer the motion to the hearing officer, in which case the parties are so advised. Motions involving amendment of the notice of hearing are normally ruled on by the Regional Director, as are motions to dismiss petitions and similar motions; other motions are normally referred to the hearing officer.

(Motions made in connection with stipulations for certification upon consent election prior to issuance of the tally of ballots should be filed with and ruled on by the Regional Director. Motions filed subsequent to the issuance of the tally of ballots are passed on by the Board.)

11146 *Amendment of Notice of Hearing:* A notice of hearing may be amended, if need be, at any time prior to the opening of hearing.

11148 *Review of Prehearing Acts:* The notice of hearing, any amendment thereto, orders postponing or denying postponement of the hearing, motions, and rulings thereon, subsequently become a part of the record at the hearing. Likewise, rulings on petitions to revoke subpoenas will become part of the record on request of the aggrieved party. Thus, upon appropriate exception taken by any party, such matters will be considered by the Regional Director or the Board, as the case may be, when the record is reviewed. Prehearing rulings by the Regional Director (other than dismissals of petitions) may not be appealed directly to the Board but may be considered by the Board in connection with a request for review of the Regional Director's decision.

11180–11248 *The Hearing*

11180 *Nature and Objective:* The R case hearing is a formal proceeding designed to elicit information on the basis of which the Board may discharge its duties under Section 9 of the Act. As such, it is investigatory and not adversary.

11182 *Formality:* An R case hearing is a formal proceeding. As such, it should be conducted at a place conducive to the maintenance of a judicial atmosphere. If it cannot be held in the Regional Office's hearing room, it should be held, if possible, in a courtroom. If space secured proves inadequate or accommodations are poor, notify the official responsible for securing hearing rooms and, if possible, notify that official of the location and availability of more suitable hearing space.

At the hearing, the conduct of the parties should be dignified, both on and off the record. Building property should not be misused. Special effort should be made to prevent incidents that might jeopardize future use of courtrooms or other space secured for the hearing. Smoking should not be permitted while the hearing is in session and, in or out of the session, the normal building rules as to smoking must be observed.

11182.1 *Misconduct:* Misconduct before the hearing officer is ground for summary exclusion from the hearing. Misconduct of an aggravated character engaged in by an attorney or other representative of a party shall be ground for suspension or disbarment by the Board from further practice before it after due notice and hearing.

In the event such misconduct occurs, a full report thereof should be submitted to the Division of Operations Management by the hearing officer.

11184 *The Hearing Officer:* The R case hearing is conducted by a hearing officer who is, normally, a field examiner or attorney from the Region in which the hearing is held.

The hearing officer may or may not be the same agent who has handled earlier, or who may handle later, phases of the same case but he/she may not participate in any phase of the decisional process. The hearing officer should be thoroughly familiar with the potential issues in the case to be heard.

In contrast with the role of the trial attorney in a C case hearing, the hearing officer is *not* an advocate. The hearing officer must be impartial in his/her rulings and conduct, both on and off the record.

11184.1 *Responsibility To Develop Complete Record:* It is the primary duty of the hearing officer to see that a full record is developed. Therefore, the hearing officer must be aware of all issues in a given case and of the types of information generally bearing on such issues.

A second duty of the hearing officer is to keep the record as short as is commensurate with its being complete. By soliciting stipulations and by excluding irrelevant and overcumulative material, the hearing officer should achieve an uncluttered record.

The hearing officer has a positive duty to ensure a complete record. The hearing officer may cross-examine, may call and question witnesses, and may call for and introduce all appropriate documentary evidence, being limited only by the relevance of the evidence to the issues. Whenever the hearing officer's technical assistance is required by any party, it should be given.

It should be recognized that, occasionally, the hearing officer's responsibility for the development of a complete record may lead to an appearance of undue assistance to a party that does not itself introduce evidence in support of its positions. In discharging his/her obligation to develop a full record, the hearing officer must also keep constantly in mind that to the parties he/she is the Board's representative and that the parties expect objective and considerate regard both of their interests and responsibilities. The hearing officer should exercise self-restraint, should give the parties prior opportunity to develop points, and should refrain from *needlessly* "taking over."

11186 *The Hearing Kit:* All regional personnel who conduct representation hearings should maintain and possess a hearing kit.

11186.1 *General:* The hearing kit should contain, as applicable to *all* cases, the following:

a. Copy of Board's Rules and Regulations

b. Copy of manual sections regarding hearings, where appropriate

c. Blank forms: Subpoenas, Ad Testificandum and Duces Tecum, and Appearance sheet (Form NLRB-1801)

d. Consents (Form NLRB-651) and Stipulations (Form NLRB-652)

e. Withdrawal Request (Form NLRB-601)

f. Request to Proceed (Form NLRB-4551)

g. Order Transferring Representation Case to the National Labor Relations Board (Form NLRB-4481)

h. Report on Investigation of Interest (Form NLRB-4069)

i. Waiver (Form NLRB-4480)

j. Envelopes of various sizes addressed to Regional Office

k. Pencils and writing pad

l. Extra copies of Form NLRB-4669, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of the National Labor Relations Act, as Amended

11186.2 *Specific:* With respect to any given case, the following should be added to the hearing kit:

a. Case file, including payroll list and showing of interest

b. Formal papers, ready for introduction as exhibits (see sec. 11192)

c. Original and copy of appearance sheet (Form NLRB-1801)

d. Close of R Case Hearing (Form NLRB-856)—two copies, with copy of petition or last amended petition attached to original

e. Airmail envelope addressed to Office of Executive Secretary

f. Airmail envelope addressed to National Labor Relations Board, Washington, D.C. 20570

11188 *Consent Agreements:* In advance of the date of hearing, every effort should have been made to procure an agreement for a consent election. Before opening the hearing, the hearing officer should again explore the possibility of a consent election, and, if the parties indicate a willingness to execute a consent election agreement, the opening of the hearing should be delayed until after the possibility has been completely explored, unless unusual circumstances are present. If the agreement is thereafter executed, the hearing should not be opened; the subsequent approval will also serve as a withdrawal of the notice of hearing.

If the possibility (of consent) arises during the hearing, the hearing should be recessed for its consideration. Should agreement be reached, the hearing should be adjourned indefinitely. It is unnecessary to insert the agreement in the record. The approval of the agreement will serve as withdrawal of the notice of hearing.

11190 *Opening of Hearing:* Prior to the opening of the hearing, the hearing officer should fill out, or have the parties fill out, an appearance sheet (Form NLRB-1801), and remind them of the requirement that any request for review be served on *each party* as well as on *counsel* or representative for each party and on the Regional Director.

At this time the parties should also be shown the formal papers prepared for Board Exhibit 1 and given a copy of the index and description of the entire exhibit.

The hearing should open at the place, date, and hour scheduled. If there is a deviation that has not been noted by an appropriate order, the change, the reason, and the acquiescence of the parties should be put into the record at an early opportunity.

11190.1 *Hearing Officer's Opening Statement:* On the opening of the hearing, the hearing officer should read into the record the following statement:

> This is a formal hearing in the matter of __________, Case __________, before the National Labor Relations Board.

> The hearing officer appearing for the National Labor Relations Board is ____________.
>
> All parties have been informed of the procedures at formal hearings before the Board by service of a statement of standard procedures with the notice of hearing. I have additional copies of this statement for distribution if any party wishes more.
>
> Will counsel please state their appearances for the record? For the Petitioner? . . . For the Employer? . . . For the Intervenor? . . . Are there any other appearances? Let the record show no (further) response.
>
> Are there any other persons, parties, or organizations in the hearing room at this time who claim an interest in this proceeding? . . . Let the record show no (further) response.

11190.2 *AC, UC, and UD Cases:* Where notice of hearing is issued and Form NLRB-4669 is appropriate, the procedure specified above should be followed.

11192 *Introduction of Formal Papers:* The "formal papers" consist of the petition and any amended petitions; the notice of hearing and any amendments thereto; the order transferring case to Board (if served prior to hearing); any motions on which prehearing rulings have been made, which bear on the issues to be resolved by the hearing; and affidavits of service pertaining to any of the above.

In advance of the hearing, they should have been placed in chronological order from the bottom upward, and marked as Board Exhibit 1(a), 1(b), 1(c), etc., the top document, bearing the last number of the series, being an index and description of the formal documents.

After the hearing officer has made an opening statement, he/she should say (as example):

> I now propose to receive [instead of offer] the formal papers. They have been marked for identification as Board's Exhibit 1(a) through 1( ), inclusive, Exhibit 1( ) being an index and description of the entire exhibit. This exhibit has already been shown to all parties. Are there any objections?

Objections or lack thereof should be affirmatively placed in the record. Objections may be voiced, but, normally, they will be withdrawn upon the giving of explanations. It should be explained, if necessary, that the papers in question constitute a routine introduction of the hearing; that admission of the documents does not irrevocably establish the truth of any allegations therein; that any relevant evidence may be introduced irrespective of such allegations; and that, in any event, the (Regional Director) (Board) will pass on the validity of this and any other evidence.

A request to proceed, if any, is not a part of the formal papers and should not go into the record at any point. Similarly, a Board ruling on administrative appeal is not a part of the formal record.

11194 *Motions to Intervene:* At this point, the hearing officer should affirmatively raise problems of intervention. In addition to calling attention to any prehearing motions to intervene that may have been referred to the hearing officer, he/she should ask those present whether there are any current motions to intervene. Before ruling on such motions, the hearing officer should ask all other parties for their positions.

Motions to intervene, whether prehearing or made at the hearing, whether written or oral, should contain the grounds relied on for a favorable ruling.

The hearing officer should make certain that the full and precise name of any intervenor is adduced on the record and that the record is clear as to whether the intervenor is the local, the international, or both.

11194.1 *Based on Existing or Recently Expired Contract:* Where the motion is based on an existing or recently expired contract, a copy of the contract should be put into the record. The method of introduction is treated in section 11224.1 for purposes of seeking to introduce a contract into evidence; the union in question may have all the rights of a party even though the motion to intervene has not yet been ruled on.

11194.2 *Based on Evidence of Interest:* Where the motion is based on evidence of interest earlier presented to the Regional Office or now presented to the hearing officer, the fact should be noted on the record. However, the evidence of interest should not be introduced or received in evidence. Extended argument on the adequacy of the interest is inappropriate. Although the hearing officer's eventual ruling will be based on the investigation of interest previously made by the Regional Office or by the investigation that may now be made by the hearing officer, the results of either investigation are an administrative matter not subject to attack by the parties; in answer to arguments to the contrary, the hearing officer should announce this principle. The hearing officer may and, if appropriate, should announce that the union seeking intervention has or has not demonstrated a showing sufficient to entitle it to intervention.

Evidence of interest presented at the hearing need not be checked on the spot. If it appears to be sufficient on its face, the motion to intervene may be granted "subject to a subsequent check of the sufficiency of interest." If the hearing lasts long enough, the check may be made between sessions, in which case the hearing officer may announce a final ruling. Otherwise, in the hearing officer's report (see sec. 11250) and in his/her amended report on investigation of interest, Form NLRB-4069, he/she should administratively advise the Regional Director or the Board of the results of the check.

11194.3 *Tests for Granting or Denying Intervention:* Should the union seeking intervention meet any of the tests described in section 11022, et seq., the motion for intervention should be granted.

Motions to intervene made by "employees," or "employees' committees," not purporting to be labor organizations should be denied.

Motions to intervene made on the basis of "interest in the unit" by labor organizations representing employees in other parts of the plant, for example, or other plants of the employer, should be granted. At some subsequent point, however, such intervenor should be asked to make clear its position as to participation in any election ordered.

A motion to intervene made by an organization that has been ordered disestablished by a final Board order should be denied. But, in the absence of an unreversed Board order to this effect, objections to a motion to intervene based on the allegation that the union seeking intervention is illegally dominated or assisted should be rejected.

A party permitted intervention may thereafter participate fully.

11195 *Payroll List Submitted at Hearing:* Should an employer's payroll list be submitted at the hearing for the first time—and this applies to an investigation of the interest of the *petitioner* as well as any intervenor—its use depends on the circumstances. If the employer has had a request and sufficient time to furnish a list earlier, the list now presented need not be checked. If the submission is not unreasonably late, an actual check should be made between sessions, if the hearing is a long one; or, otherwise, after the hearing has ended.

11196 *Litigation of Interest Showing:* The determination of the extent of interest of each union seeking participation in a representation case is a purely administrative matter, wholly within the discretion of the Board. This should be made clear to any party seeking to attack the interest showing of any involved union, whether petitioner or intervenor.

Evidence of interest (or of revocation) should not be introduced or received in evidence.

11196.1 *Evidence of Fraud:* If evidence of fraud is sought to be introduced at the hearing, the party desiring to present such evidence should be advised on the record to bring it administratively to the attention of the Regional Director within 5 working days; the hearing should not be interrupted.

Thereafter, if the case has been transferred to the Board, the Office of Executive Secretary should be advised whether or not such evidence has been presented to the Regional Director. If it has not been presented within 5 days, no investigation will be made unless special circumstances exist. If it has been, the investigation should be expeditiously conducted, and a report should be forwarded through the Division of Operations Management.

11198 *Correct and Complete Names of Labor Organizations:* Hearing officers are responsible for establishing on the record the correct and complete name of any labor organization appearing in a representation case hearing. The name of the labor organization should be the same as that set forth in its constitution, bylaws, or other documents; the name should be spelled out—initials are not acceptable; and any affiliation with a national, international, and/or parent federation must be clearly spelled out. The sole exception is that AFL–CIO need not be spelled out.

It is not necessary to introduce copies of constitutions, bylaws, or other documents to establish the correct name of a labor organization. The statement of the representative or counsel for the organization involved to the effect that the name is the true and correct name should suffice. Whether more evidence is required beyond this is a matter for the hearing officer to determine.

In the event of any reluctance to cooperate on the part of a labor organization, the hearing officer should advise its representative that a remand might be necessary if there is any doubt as to the organization's correct and complete name. In those cases where a labor organization's refusal to cooperate is deliberately designed to delay a proceeding such as an RM or RD case, the Regional Office should assume the full burden of getting the correct name on the record.

11198.1 *Shortened Name Requested:* If a request to use a shortened name is made at the hearing, the hearing officer should explain that the Board requires that the correct and complete name appear on the ballot *together* with any initialed or shortened name. If the request to add a shortened name occurs in a factual situation that might confuse or confound the employees, the hearing officer should develop the entire situation on the record and let the Regional Director or the Board make the determination in the decision.

11198.2 *Amendment of Petition to Reflect Correct Name:* When it is developed on the record that the correct and complete name of the company or of a labor organization is different from that appearing on the petition, motion(s) should be made on the record amending the petition to reflect the correct name(s). This will permit the use of the proper name on the case caption in the Decision and other papers.

11198.3 *Single or Joint Parties:* To eliminate the possibility of confusion with respect to single versus joint parties, the hearing officer should make sure that the record clearly indicates that a petitioner or intervenor is single or joint. For example, if a local and an international are jointly appearing as a petitioner or intervenor, the name of the international would appear twice; first, identifying the affiliation of the local, and second, the name of the international appearing for itself.

11200 *Checklist:* This item is intended to include a description of a typical hearing. It does not purport to cover all situations nor is the order given necessarily the best in every case. As varied by the hearing officer in any given case, it, or something like it, should be used both in the preparation for and the unfolding of the hearing.

a. Appearance sheets are filled in by the hearing officer or for him/her by the parties. Each person likely to speak is made known to the others, including the reporter. The hearing officer makes sure all parties are ready.

b. The hearing is called to order. The opening statement is read, including the parties' record statements of appearance (sec. 11190.1). All representatives who may subsequently speak up should be identified on the record.

c. Formal papers should be identified and received (sec. 11192). So should prehearing motions and rulings/referrals, where appropriate.

d. Motions for intervention should be called for and, if made, should be ruled on. (See sec. 11194.)

e. Correct names of parties should be ascertained (see sec. 11198, et seq.). Appropriate corrective motions for amendment of petition, if made, should be ruled on. (See sec. 11204.)

f. Off the record, possibilities of a stipulation of commerce facts should be explored (sec. 11222.1). If attained, stipulations should be put on record; if not, testimony with respect to commerce must be taken.

g. Off the record (if possible), positions of parties should be secured on "labor organization" status of union parties; circumstances of raising of representation question; composition of bargaining unit; and any other issues raised by any parties (contract bar, seasonality, etc.) bearing on potential decision. Factual agreements should be incorporated into stipulations; it is unnecessary to receive, as exhibits, copies of correspondence or records if a factual stipulation will give all necessary information.

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h. On the record, a summarization of the off-the-record discussion should be made. This may take the form either of each party's summarizing his/her position on each issue or of the hearing officer's doing so, with recorded acquiescence by the parties. Stipulations constructed off the record should be read into the record.

i. Off the record, the order of presentation should be decided on. (See sec. 11218.)

j. The record should be developed to reflect the exact positions of the parties when unit contentions are involved. It is particularly important to differentiate clearly office clericals and plant clericals. The record should contain factual data concerning job content to enable the Regional Director or the Board to determine proper unit placement with respect to these classifications.

k. Evidence should be received, either in form of sworn testimony or stipulations. (See secs. 11216–11230.) Opportunity for cross-examination should be accorded to all parties. Where appropriate, testimony of a given witness may be broken, for purposes of cross-examination, redirect, etc., into segments (e.g., the witness' knowledge as to the status of, say, working foremen might be thoroughly exploited before proceeding to the status of the next job category).

l. Each party should be permitted to introduce any relevant testimony.

m. The hearing officer should conduct whatever necessary examination has been omitted by the parties. The hearing officer may call witnesses to fill the gaps in the situation.

n. The parties should be asked whether, in the light of the testimony received, they wish to make any changes in their respective positions on the issues.

o. Opportunity should be given for oral argument on record for any party desiring it (sec. 11240).

p. When the parties have indicated that they have nothing further, the hearing officer should read his/her closing statement and declare the hearing closed (sec. 11246.1).

11202 *Motions, Other Than Intervention:* All motions made at the hearing should be in writing or may be stated orally on the record. (If in writing, an original and two copies should be filed, and a copy served on each party.) They should briefly state the order or relief sought and the grounds for the motion.

The hearing officer should refer for ruling by the Regional Director or the Board all motions to dismiss, motions to transfer the case to the Board, and motion for oral argument before the Regional Director or the Board. Such referrals should be made on the record. If a motion to disqualify the hearing officer is made, the grounds should be stated on the record, and the hearing officer should make a ruling on such terms as he/she deems appropriate.

The hearing officer may, and should, rule on all other motions (and objections) as promptly as possible. If the hearing officer cannot make an immediate ruling, he/she should make the ruling before the close of the hearing.

Rulings made by the hearing officer may be made orally on the record or in writing. If in writing, a copy should be served on each party, and the original should be made part of the record.

The parties have an automatic exception to all unfavorable rulings, thus making them subject to review at such time as the entire record is considered by the Regional Director or the Board as the case may be.

11204 *Amendments to Petition:* During the course of the hearing, a petitioner may seek to amend its petition. This should be done by means of a request, or motion to amend, and a supporting statement.

The hearing officer, after soliciting the positions of other parties and after argument, should grant or deny the request on such terms as he/she deems just.

The usual problem is not whether or not the request should be granted—for, as a practical matter, the initiator of the proceedings should ordinarily be permitted to proceed in his/her direction or in none at all—but the consequences that may flow from the change. Although amendments to petitions do not ordinarily require postponements, other parties may be entitled to additional time to prepare their case, which they are not now ready to present if the change is a radical one. A reexamination of the showings of interest may be indicated; also, perhaps, a reexamination of the question of appropriateness of unit. In other words, a reappraisal of the basis for the hearing may be called for. It is the responsibility of the hearing officer to determine whether these questions exist and, if so, to solve them by investigation and appropriate recommendations or actions.

11206 *Filing of Petition at Hearing:* The hearing officer may accept a petition for an overlapping unit filed by a labor organization.

If the hearing officer believes that the hearing on this petition should appropriately be held simultaneously with the hearing on the pending petition, he/she should first obtain the position of the parties on consolidation and need for continuance, if any. The hearing officer should then recess the hearing for a short time, during which he/she should communicate with the Regional Director, inform the latter of the filing, procure a docket number, and advise the Regional Director of the parties' positions on consolidation and continuance. The hearing officer should forward copies of the newly filed petition to the Regional Director as quickly as possible, remembering to insert as the date of filing the date of receipt of the petition.

Whatever preformal investigative steps are necessary with respect to the newly filed petition (e.g., interest showings) usually will be taken by the hearing officer.

On resumption of the hearing, if the Regional Director has decided on consolidation, the hearing officer should introduce the new petition into the record. If the hearing is being held in the Regional Office, the hearing officer should introduce the Regional Director's amended notice of hearing and order of consolidation into the record; otherwise the hearing officer should state on the record the Regional Director's rulings and reserve exhibit numbers for later introduction of the amended notice of hearing and order of consolidation. The hearing officer may, if necessary, order a continuance.

NOTE: As between a new petition with consolidation and mere intervention by an *intervenor* seeking a "different" unit, the latter, with its reduction of pleadings and formality, is preferable.

If the hearing becomes a consolidated one, each petitioner becomes a cross-petitioner.

11208 *Withdrawals:* A withdrawal request submitted to the hearing officer should be considered in light of the principles discussed in detail in section 11110.

If it appears proper that the request should be granted, the hearing should not be opened; if the hearing has already been opened, the request should be made part of the record and the hearing should be adjourned indefinitely. The eventual order of approval should contain a withdrawal of notice of hearing. (The Regional Director retains authority to withdraw a notice of hearing until the close of the hearing.)

11210–11214 *Subpoenas*

11210 *Issuance:* The hearing officer should have available a supply of subpoenas, both ad testificandum and duces tecum.

Upon application for subpoena by any party the hearing officer should deliver the subpoena to the requesting party after he/she has entered the case name and number on the subpoena. The application must be in writing but it need not name the person whose testimony is sought or describe the documents whose production is sought, and it may be made during a recess period off the record.

The hearing officer should not *serve* subpoenas on behalf of parties.

The hearing officer may, in the interest of making a full record, subpoena witnesses himself/herself. In such cases, the hearing officer should issue and serve subpoenas.

For more extensive discussion of issuance and service of hearing subpoenas, see sections 11770–11780.

11212 *Petitions to Revoke:* The hearing officer should rule on petitions to revoke that are referred to him/her or that are filed directly with him/her.

For extended discussion of form, service, and validity of petitions to revoke, see section 11782.

With respect to a subpoena ad testificandum, the 5-day period is a maximum, not a minimum. A problem may arise when a subpoena duces tecum is returnable less than 5 days from date of service. Should a continuance for the remainder of the 5-day period be requested, the better procedure, if it is possible, is to discuss the entire matter off the record—the nature of the evidence sought, possible substitutes, the possibilities of stipulation, the grounds for the anticipated petition to revoke, and the prejudice, if any, that would accrue should the postponement request be denied. Perhaps the situation can be resolved by turning to other matters temporarily, returning to the disputed subpoena afterwards. Usually, the matter can be "worked out" without the necessity for passing on the postponement request. If not, the granting or denial of the request should depend on the prejudice that will accrue to any party as a result of the decision.

Actions and documents in connection with petitions to revoke, including rulings, do not go into the record unless the aggrieved party specifically requests it.

11214 *Delays for Enforcement:* If the hearing officer is faced with a request for adjournment in order to serve a subpoena or to enforce a subpoena not complied with, he/she must reconcile, as best as possible, the concepts that speed is of the essence in resolving representation questions and that the Regional Director or the Board should be fully apprised of the facts. The hearing officer should ask the party seeking the delay (and himself/herself, in the event a witness that he/she has called is involved) what the testimony of the witness would add, whether it is necessary, and whether there are any satisfactory substitutes. If on consideration the hearing officer concludes that the testimony sought is relevant and necessary, he/she should adjourn the hearing.

(For a discussion of subpoena enforcement, see secs. 11790–11806; for a discussion of postponements, generally, see secs. 11142 and 11238.)

11216–11230 *Presentation of Evidence*

11216 *General:* Information is introduced into the record along the lines employed in C case hearings, but, unlike those hearings, the rules of evidence prevailing in courts of law and equity are not controlling. However, they should be followed whenever possible. The overwhelming considerations are relevance and completeness.

Permission and consent under Section 102.118 are hereby given to Board personnel (by the General Counsel with respect to documents under his/her supervision or control) for the use, in R case hearings, of file material for the purpose of developing a full and complete record, including, where necessary, display of the materials to opposing parties and their introduction into evidence. Where use of materials is sought by parties other than Board personnel or by anyone in a matter other than a Board hearing, express consent must be sought in accordance with Section 102.118.

(Relative to subpoenas directed to Board personnel in any proceeding, see secs. 11820–11828.)

Specific items are treated below. For a broad discussion of evidence presentation, see sections 10390–10402, "Casehandling Manual, Part One, Unfair Labor Practice Proceedings."

11218 *Order of Presentation:* There is no set order of presentation applicable to all R cases. The petitioner should be prepared to proceed with introducing material evidence; next, the other parties; and finally (if necessary) the hearing officer. However, if this procedure detracts from obtaining an orderly and concise record, the hearing officer has the discretion to alter this arrangement and, if necessary, to call and examine witnesses. Nor should parties be limited (except for considerations of materiality and overcumulativeness) from reopening their cases to present additional facts. The completeness of the record should not suffer on the basis of technicalities.

Parties to the hearing should succinctly state on the record their position as to the issues to be heard prior to the presentation of evidence/witnesses, and also after all such testimony/evidence has been received into the record.

11220 *Witnesses:* Each person called as a witness should be sworn in, prior to testifying, by the hearing officer. The hearing officer should receive from the witness, who is standing with right hand upraised, an affirmative answer to the question: "Do you solemnly swear that the testimony you are about to give shall be the truth, and the whole truth, and nothing but the truth, so help you God?" (Affirmation may be used where requested.)

Each witness is subject to cross-examination by each of the parties other than the one calling the witness.

On recall in the course of a case, a witness need not be resworn but should merely be asked to signify, on the record, that the witness understands that he/she is still under oath.

The hearing officer should rule on his/her objections to questions, including objections to his/her own questions, as they are raised.

The refusal of a witness at a hearing to answer any question that has been ruled to be proper shall, in the hearing officer's discretion, be ground for striking all testimony previously given by the witness on related matters.

All motions to strike, whether on the grounds just stated or on other grounds, must be ruled on by the hearing officer.

11222 *Stipulations:* The hearing officer should endeavor to secure stipulations, wherever possible, in order to narrow the issues and to shorten the record.

11222.1 *Off the Record:* A suggested method of procuring, constructing, and receiving stipulations follows: Whenever it appears to the hearing officer that a stipulation could or should be procured, he/she goes off the record to explore the possibilities; assists in fashioning and recording the stipulation; and, finally, on the record, recites the stipulation and receives the verbal acquiescence of all parties.

11222.2 *Supporting Testimony:* Care should be taken that the contents of stipulations are not so conclusionary that the Regional Director or the Board might hesitate or be unable to adopt and follow them without "primary" foundation. For example, a stipulation that the Board has jurisdiction over the parties is worthless without a recital of supporting facts. To ensure an adequate basis, it may be necessary to "back up" a stipulation with some brief supporting testimony by a witness.

11222.3 *Relevance and Admissibility:* It is possible that the parties will be willing to stipulate to certain facts, although one of the parties contends they are irrelevant and asks that the stipulation be rejected. The hearing officer must, of course, rule on the relevance and, hence, the admissibility; but (as in the case of all proffered evidence), where there is substantial doubt by the hearing officer, the doubt should be resolved in favor of receiving the stipulation.

11222.4 *Joinder of All Parties Necessary:* All parties should join in each stipulation. If one party "has no knowledge" (e.g., if a union has no knowledge of commerce facts), it should be asked for an affirmative or negative answer to the question of whether it will join in the stipulation. In the absence of joinder of all parties, competent testimony should be received.

11224 *Exhibits:* Documents and records, if relevant, are received in evidence as exhibits. (Unlike a C case hearing, they need not be submitted in duplicate.)

11224.1 *Identification and Authentication:* A document intended to be introduced into evidence should be marked for identification; for example, Board's Exhibit 2, Petitioner's Exhibits 4(a) and (b), Employer's Exhibit 3, etc. The original should then be handed to the witness through whom it is being offered and, through questions and answers by the party who will offer the exhibit, be identified, authenticated, and "connected." It is then offered into evidence. At this point, an objection being made, its authenticity and relevance may have to be argued. If necessary, the various parties will be given the privilege of clarifying their positions and further illuminating the record on the admissibility of an exhibit by asking (voir dire) questions bearing on the admissibility.

11224.2 *Relevant Portions Specified:* An aim of the hearing is to present a record that, while complete, is concise. In the absence of special circumstances, exhibits are not admissible unless relevant and material, even though no party objects to their receipt. The burden of making lengthy examinations and analyses of voluminous and unexplained exhibits should not be shifted to the Regional Director or the Board. Where possible, lengthy documents should go into the record only by a full description and a reading of pertinent portions. Before ruling on admissibility, the hearing officer is free to request parties to analyze, preferably on the record, payrolls, cards, statistics, and correspondence offered; often, thereafter, there is no necessity for admitting the documents. Or, with respect to those documents that are admitted, the hearing officer may require parties to specify what they believe to be relevant portions. If additional time is necessary for such analyses, a recess or adjournment should be granted; time so spent will save the Regional Director or the Board similar effort.

11224.3 *Withdrawal of Original Copy:* On motion, the hearing officer may grant leave to an offering party to withdraw its original exhibit and substitute a copy. If so, the person offering the exhibit assumes the responsibility for procuring the necessary copy.

11224.4 *Rejected Exhibits:* If an exhibit has been refused admission, the offering party may, on request, have it included among the Rejected Exhibits that become part of the record.

11224.5 *Custody of Exhibits:* On receipt into evidence, the reporter should take custody of exhibits and hold the exhibits during sessions, recesses, and adjournment to a specified date. During periods of indefinite adjournments, the reporter forwards the exhibits to the

Regional Office. When/if the hearing is resumed, the exhibits will be returned to the reporter. After the hearing is closed the exhibits are delivered to the Regional Office.

11224.6 *Exhibit Outstanding; Provision for Receipt:* Where an exhibit is still outstanding at the conclusion of testimony, provision for its receipt after the close of hearing may be provided for, either by stipulation or hearing officer's ruling. A number should be stipulated and reserved, with adequate provision for inspection and (written) comment by adverse parties.

11226 *Offers of Proof:* On rejection by the hearing officer of proffered testimony, or line of testimony, a party may make an offer of proof, or be asked to do so by the hearing officer.

The offer, in essence, is a statement that, if the named witness (or witnesses) were permitted to testify on the matters excluded, he/she would testify to specified facts. The facts should be set forth in detail; an offer in summary form or consisting of conclusions is insufficient.

An offer of proof may take the form of an oral statement on the record, a written statement to be included in the record (copies and service as with motions, see sec. 11202), or with permission of the hearing officer specific questions of and answers by the witness.

(For extended discussion of offers of proof, see sec. 10396.)

11228 *Special Admissibility Problems:* In addition to the normal considerations bearing on admissibility of evidence—relevance, form, etc.—there are a number of admissibility problems peculiar to the representation hearing.

For example, *jurisdiction* is one aspect where departure from the rules of evidence may be absolutely essential. In the absence of cooperation of the employer, ingenuity must be exercised by the hearing officer. If there is compliance with a subpoena or, in the event of noncompliance, if there can be speedy enforcement (secs. 11790–11806), the problem will be solved; but if not, other techniques must be resorted to.

Employee witnesses may testify and so may suppliers' or customers' representatives. The employer possesses the best evidence, and employer objections should be considered in this light.

If letters from suppliers and customers are available (but not their representatives who can testify), such letters should be introduced. In such cases, it is well to receive, as "foundation" material, the Region's inquiries to which letters are answers.

Evidence of *unfair labor practices,* as such, is not admissible in a representation hearing. Specifically, evidence of employer assistance to a union party to the proceeding, not based on an existing Board order, should be excluded; this restriction applies, moreover, to the question of whether a union party is the successor of a previously disestablished union. Likewise, on the issue of eligibility, 8(a)(3) evidence should not be received. Similarly, in an RC or RD case, evidence on the issue of whether petitioner's interest was obtained through efforts of supervisors is not admissible. However, evidence may be taken in an RD case as to whether the petitioner is a supervisor.

Any party may introduce evidence as to the *scope* (i.e., employee, plant, craft, department) of the unit sought by the petitioner and its *composition* (i.e., inclusion or exclusion of specific job classifications). However, evidence with respect to the appropriateness of any *substantially different bargaining unit sought by a union* should not be received if that union has not presented evidence of designation by at least 30 percent of the employees in the unit.

Evidence relating to compliance with Titles I–IV of the Labor Management Reporting and Disclosure Act is also inadmissible.

11230 *Eligibility Date:* The normal eligibility date is the payroll period immediately preceding the direction of election.

Where a party contends that an eligibility date other than the normal one can be used, or where, because of the unusual circumstances, the hearing officer believes that an abnormal eligibility date might be appropriate, all relevant facts (e.g., those surrounding a current labor dispute or the seasonality of operations) and the positions of the parties should go into the record.

11233 *Petitions in Other Regions—Same Employer:* The mere fact that petitions are pending in other Regions, or before the Board, does not necessarily mean that consolidation of cases will be required. Since this is a possibility, however, it is best that some mechanism be provided whereby casehandling may be coordinated. Therefore, the hearing officer should attempt to obtain as much information as possible in order to determine the impact, if any, on the case.

11234 *Appeals, During Hearing, From Rulings of Hearing Officer:* Rulings by the hearing officer on motions or on objections, and orders in connection therewith, may not be appealed except by special permission. Requests for such permission should be made promptly in writing, a copy served on each party.

Requests for permission should be directed to the Regional Director in all cases except those in which an order transferring representation case to the Board (Form NLRB-4481) has already issued.

The request for special permission to appeal should succinctly state the ruling, the surrounding circumstances, and the grounds urged for reversal. Neither the hearing officer nor the Regional Office should file an opposition to the request.

In most cases, an adjournment will be requested on the occasion of the filing of a request for special permission to appeal. The hearing officer should grant the minimum length of time required to prepare the request.

In situations where a request for special permission to appeal is made to the Board, in order to assist the Board in fully considering such matters, the Region should file a response when, in the judgment of the Region, the appeal or request does not present all of the relevant issues, facts, or arguments that the Region believes the Board should consider in granting or denying the request and appeal.

If the Region intends to submit a response, the Region should contact the Office of the Executive Secretary and advise that office that the Region will be filing a response. The Region should then promptly submit its response, so that the Board can make a timely determination of the matter.

11238 *Postponements:* One or another of the parties may desire a postponement (continuance, adjournment, or recess) at any point during the hearing. Power to grant such requests rests in the hearing officer.

The hearing officer will act favorably only on a showing of good cause. Often, in this respect, the hearing officer will be called on to effect a reconciliation of two policies—the importance of the prompt processing of R cases under the scheme of the Act (see Priority of Cases, sec. 11740) and the essentiality of obtaining a complete record (see sec. 11184.1).

The necessity for a postponement may be dissipated by the passage of time. Often, on a suggestion that the hearing proceed in those aspects on which progress is possible, the postponement request may be withdrawn and never renewed.

(Continuance of 5 or more calendar days involves an additional court reporter attendance fee. Therefore, wherever practicable, any continuance should be set within 4 days.)

11238.1 *Ground; Lack of Counsel:* If the ground given for postponement is the lack of counsel or the so recent entry of counsel as to obviate counsel having knowledge of the facts or the pleading of prior commitments by newly acquired counsel, a reasonable continuance may be granted, but unwarranted delay should be avoided. If the time elapsed since the issuance of notice of hearing is so short as to afford inadequate time for preparation, this should be taken into account.

11238.2 *Ground; To Bring in Additional Information:* If the ground given is the necessity for time to bring in additional, relevant information, the hearing officer should explore every avenue by which the information may be elicited promptly (e.g., stipulation, adjournment to a more convenient place, etc.). If necessary, an adjournment may be avoided by arranging for a closing of the hearing subject to the later introduction of an exhibit (see sec. 11224.7).

Delays necessitated by such matters as appeals to the Regional Director or Board, subpoena enforcement proceedings, etc., should be kept at a minimum.

If a hearing is adjourned because additional evidence is not immediately available, the hearing officer should make clear to the parties what information is desired for introduction at the resumed hearing, concentration should be on this information, but the hearing officer should not allow such concentration to exclude other relevant evidence that may be offered.

11238.3 *Hearing Rescheduled:* Adjournments may be to a day certain or may be indefinite. In the latter event, the hearing is rescheduled by an order from the hearing officer to the parties, which order should be made a part of the record on the resumption of hearing; or, if the necessity for resumption of the hearing disappears, the hearing may be closed by order of the hearing officer.

With respect to indefinite adjournments in connection with consent agreements, withdrawal requests, and subpoena enforcement, see sections 11188, 11208, and 11214, respectively.

11240 *Oral Argument at Hearing:* Before the close of the hearing, the parties may, if they wish, argue orally on the record.

Except under unusual circumstances, the hearing officer should not urge that there be oral argument normally and should confine himself/herself to the question, "Is there anything further any of the parties wish to present?"

If oral argument is desired, there is no specific procedure to be applied. If the parties are unable to agree on the order of presentation of argument, the hearing officer should suggest that the petitioner proceed first, then the other parties; but, if any party desires subsequently to add anything to the original presentation, that party should be allowed to do so. There should be no formal time limits, but the hearing officer should not feel constrained from interrupting if the argument appears to wander. If the occasion appears, the hearing officer may point out that what is being said might be covered in a brief "if it is intended that a brief be filed."

11242–11248 *Close of Hearing*

11242 *Generally:* The hearing should not be closed until all parties have been asked if they desire to add anything further and the hearing officer is satisfied that all available information bearing on the issues has been put into the record. Without regard for who last came forward with testimony and whose turn it now is, all parties should be asked, on the record, whether they have anything further to add.

Before reading the closing statement, the hearing officer should ask the court reporter if he/she will be able to furnish prompt (3-day delivery) or expedited copy (5-day delivery) of transcripts (except in hearings held in Puerto Rico, Region 24; Hawaii, Subregion 37; or Alaska). The hearing officer should also inquire as to the estimated length of the transcript.

Where a hearing is closed sometime after it has been indefinitely postponed—for example, where it was postponed so that additional information could be procured and it now appears that the information is not available—the hearing should be closed by written order of the hearing officer, which shall, among other things, (a) recite the occasion for the order and (b) include the essentials of a closing statement (see below). The order should be served on the parties and the original should be included in the record. (See sec. 11248, d.)

11244 *Briefs*

11244.1 *Generally:* The Regional Office should not agree to act as agent for the filing party with respect to the filing of briefs, but should advise the parties of the proper procedure.

(Instructions regarding the time for filing, place of filing, and number of copies are contained in Form NLRB-4669 and will not be repeated here.)

11244.2 *In 8(b)(7) Cases:* In cases under Section 8(b)(7), parties may not file briefs unless special permission is granted by the Regional Director or the Board, as the case may be.

11244.3 *Extension of Time for Filing:* (This item relates to requests for extensions directed to the hearing officer prior to close of hearing.)

The Rules and Regulations provide that the parties automatically have 7 days within which to file briefs. In addition, the hearing officer, in his/her discretion, may grant an extension of time not to exceed 14 days, which, added to the automatic 7 days, makes a total of 21 days from close of hearing.

Requests for an extension of time should *not be invited* by the hearing officer.

If requests are made, they should be considered in light of various factors, including (a) the reasons offered by the requesting party, (b) the length of the transcript, (c) the complexity of the issues, (d) whether prompt or expedited copy of the transcript has been promised by the reporter, (e) the length of time the parties have had to prepare since the initiation of the proceeding, and (f) previous delays or postponements granted to the requesting party.

The authority to grant extensions of time to file briefs is discretionary with the hearing officer. Extensions are not automatic. If the parties do not show cause, the request may be denied. It is imperative that the hearing officer exercise his/her own judgment, subject *only* to the above limitations as to the maximum permissible extension. All parties should understand that rulings on requests for extensions made at the hearing are solely within the discretion of the hearing officer.

If the parties object to the hearing officer's ruling, they may still request a further extension from the regional director or the Board, as the case may be, after the hearing.

The ruling and reasons for the extension should be stated in the hearing officer's report for the regional director's (Board's) information in the event of a post-hearing request for extension of time.

11246 *Closing Statement*

11246.1 *Hearing Completed:* Where hearing has been completed, the hearing officer should state:

> If there is nothing further, the hearing will be closed. (This is the time for requests for extensions, not already made—see sec. 11224.3.) THE HEARING IS NOW CLOSED.

(Where the hearing is being closed *except* for the subsequent receipt of any exhibit—see sec. 11224.7—the "closing" statement should be appropriately revised.)

11246.2 *Hearing Adjournment:* If hearing has not been completed but is being adjourned, the hearing officer should state:

> If there is nothing further, the hearing will be adjourned (to ____________________) (indefinitely).

11246.3 *AC, UC, and UD Cases:* When use of Form NLRB-4669 is appropriate follow procedure for R cases (see above).

11248 *Closing Checklist:*

a. Be certain reporter has all exhibits.

b. Get estimate of number of pages of transcript from reporter and complete obligation document; mail or deliver to Regional Office.

c. Make sure appearance sheet (Form NLRB-1801) is correct and legible.

   (If the case has *not* been transferred to the Board, retain the appearance sheet in the Region.)

(If the case is transferred to the Board and the hearing officer will be at the Regional Office on the morning following the close of the hearing, the hearing officer should have the Form NLRB-1801 typed, then airmailed to the Office of the Executive Secretary, a copy being retained in the Regional Office file. If the hearing officer will not return to the Regional Office on the following morning, the hearing officer should mail the form to the Office of Executive Secretary in the addressed envelope, which should be in the "hearing kit"; in such case, the hearing officer should prepare and retain a copy for the file.)

d. Fill out Close of R Case Hearing, Form NLRB-856, in duplicate and forward the original to Washington with copy of petition or last amended petition attached.

e. Unless there have been prior arrangements to the contrary, make sure that furniture is rearranged to its original state, windows are closed, lights are out, and doors are locked.

f. Where possible, notify the custodian of the premises that the hearing has closed and convey or have conveyed an appropriate expression of appreciation.

11250 *Hearing Officer's Report:* As soon as possible after the close of a hearing in any RC, RM, or RD case, the hearing officer should prepare the hearing officer's report (see sec. 11252) and submit the required number of copies to the Regional Director, or the Board in cases where an order transferring (Form NLRB-4481) has issued prior to preparation of the report. This report should be completed not later than 48 hours after close of hearing. (This report is *not* served on parties (or counsel/representatives of record), Rules. 102.66(f).)

In the ordinary case, the report can and should be prepared from notes taken at the hearing without waiting for the official transcript.

The purpose of the report is to give a brief and succinct analysis of the issues presented and of all unusual or important procedural questions. No recommendations are to be included.

Whenever a case is transferred to the Board for decision, eight mimeographed copies of the hearing officer's report should be submitted to the Deputy Executive Secretary. One should be designated as "original" and should be signed. A copy of the report on investigation of interest, Form NLRB-4069, and any amendment or revision thereof, should be attached to the original, but need not be attached to copies of the report. If an RM case presents the *U.S. Gypsum* issue, the document(s) setting forth the employer's objective considerations should be attached to the original report, but need not be attached to the copies. Reference to requests to proceed should be made in the report and therefore copies of these documents need not be attached.

In a case transferred to the Board for decision, the hearing officer should prepare a full and detailed hearing officer's report—include a full discussion of the issues, the evidence developed at the hearing, and the position of the parties. This should be done even in those cases where the decision to transfer the case to the Board is made after the submission of the hearing officer's report, which may or may not have been prepared in abbreviated form.

When a case requires priority or special handling (e.g., a seasonal industry case), the need for special treatment should be flagged by attaching a pink slip or separate memorandum to the original copy of the hearing officer's report.

11252 *Format of Hearing Officer's Report:* The format and contents of the hearing officer's report is within the discretion of the Regional Director. He/she may use a checklist form, a fuller report, or no report at all; except that in cases transferred to the Board a fuller report should be utilized.

The showing of interest form (Form NLRB-4069) should not be referred to in the hearing officer's report; however, it should be attached to the report in cases transferred to the Board as specified in section 11250.

11252.1 *Full Report:* An example of an outline of a fuller type hearing officer's report is as follows:

a. *Pleadings:*

1. Petition filed on ____________________ (date)

2. Hearing on ____________ (date) at ____________ (place)

3. Parties:

Employer:

Petitioner:

Intervenor:

b. *Issues:* If there are no issues state "None." If the issue is jurisdiction, alleged contract bar, schism, expanding unit, etc., the insertion of the word "Jurisdiction," "Contract Bar," "Schism," etc., normally will suffice, since the summary of facts under the appropriate heading will permit ready determination of the issue for purposes of assignment. If, however, the unit is in issue, it does not suffice to merely indicate that the issue is "appropriateness of unit." The unit issue should be stated more informatively such as "severance of electricians from an existing P and M unit," or "carving out single-plant unit from multiple unit" or "disagreement over inclusion of following fringe categories in P and M unit" or "supervisory status of six group leaders," etc. In short, the wording of the unit issue should briefly indicate the nature of the unit problem. This is *not* the place to state the contentions of the parties respecting the issues; this should be discussed under the appropriate subject heading.

Wherever there is an issue raised with respect to any one of the subject headings, give the positions of the parties and a brief summary of the facts as developed at the hearing.

c. *Procedure:* Were any rulings made as to which the hearing officer is in doubt?

Yes __________ No __________

(If "Yes," describe briefly below.)

List only those rulings on important or unusual questions as to which the hearing officer is in doubt, such as rejections of offers of proof, revocations of subpoenas duces tecum, motions to intervene where showing of interest was not made, etc. It is not usually necessary to list rulings on simple motions to correct names, places, minor amendments of petition, denials of motions to dismiss on grounds of insufficient evidence of interest, or procedure matters clearly governed by Board precedent.

d. *Labor organizations:* Was status contested?

Yes _________ No _________

(If "Yes," state facts briefly.)

If the parties stipulate or there is uncontested testimony in the record that the unions involved are labor organizations within the meaning of the Act, merely check "No." If such status is contested, however, check "Yes" and briefly state facts including position of the parties.

e. *Jurisdiction:* Contested?

Yes _________ No _________

(Briefly state jurisdictional facts.)

If jurisdiction is stipulated, conceded, or not contested, check "No." However, whether or not jurisdiction is stipulated, conceded, or contested, it is necessary to briefly state or summarize the jurisdictional facts. Where gross volume of business is the sole test for asserting jurisdiction, include commerce data on inflow, outflow, franchise, etc., sufficient to establish de minimis statutory jurisdiction.

f. *Questions concerning representation:* In issue?

Yes _________ No _________

(If "Yes," state facts.)

If the question concerning representation is not in issue, merely check "No." If the employer merely refused to recognize petitioner until certified by the Board, this does not make the QCR an issue in the sense of this report, so it is not necessary to recite that the petitioner on a given date by letter or telephone claimed recognition and the employer by mail or phone declined or made no reply. Nor is it necessary to recite that no claim was made on the employer prior to the filing of the petition if no real issue is involved. For all cases of this kind a check of "No" will suffice.

If, however, the QCR is in issue by reason of an alleged contract bar, expanding or contracting unit, schism, etc., give the position of the parties and a brief summary of the facts.

g. *Appropriate unit:* Is unit stipulated?

Yes ________ No ________

If the unit is fully stipulated, check "Yes" and set forth the unit as stipulated. Where the unit is substantially stipulated but certain classifications or fringe categories are in issue, recite the stipulated unit in the report and give the position of the parties and a summary of the facts concerning the classifications in dispute. Likewise, if the unit is in issue, give the position of the parties and a summary of the facts. You should always describe the bargaining history, if any.

h. *Other issues or problems:*

Yes ________ No ________

(If "Yes," state facts.)

Briefly summarize the facts of other issues or problems, if any, not appropriately covered under the above paragraphs, such as eligibility questions, petitions pending in other Regions, etc.

i. Name union desires to be designated as: (See sec. 11198.1.)

j. *Briefs:*

a. Will briefs be filed?

b. Was extension of time requested? By whom? Ruling and reason therefor.

c. Briefs due date ________________

k. Reporter's estimate of transcript pages: (______ pages)

11252.2 *Checklist:* An example of a checklist hearing officer's report is as follows:

HEARING OFFICER'S REPORT

CASE NAME ______________________ CASE NO. __________

PETITION FILED ________ HEARING __________ LOCATION __________

PETITIONER ______________________________

INTERVENOR #1 ______________________________

INTERVENOR #2 ______________________________

ISSUES: __________ No __________ Yes

JURISDICTION: __________ No Issue __________ In Issue

PROCEDURAL PROBLEMS:

__________ None __________ Continuance __________ Motions
__________ Service __________ Stipulations __________ Subpoenas
__________ Other *(Specify)* ______________________________

____

List Motions Referred to RD for Ruling ______________________________

____

LABOR ORGANIZATION:

Petitioner: __________ No Issue __________ In Issue
Intervenor #1: __________ No Issue __________ In Issue
Intervenor #2: __________ No Issue __________ In Issue

REPRESENTATION SHOWING: __________ No Issue __________ Issue Raised

QUESTION CONCERNING REPRESENTATION:

__________ No Issue __________ Accretion to Existing Unit __________ Certifcation Year Bar
__________ Contract Bar __________ Defunctness
__________ *(Coverage*
__________ *Timeliness* __________ Election Year Bar
__________ *Unlawful Clause)* __________ Expanding/ Contracting Unit
__________ Extent of Organization __________ Schism
__________ Other *(Specify)* ______________________________

____

UNIT SCOPE:

__________ No Issue __________ Single Plant __________ Multi-Plant
__________ Multi-Employer __________ Area *(District, Regional, National etc.)*
__________ Other *(Specify)* ______________________________

____

UNIT SOUGHT:

__________ Craft __________ Multi-Craft __________ Residual
__________ Departmental __________ Office Clerical __________ Technical
__________ Guard __________ Plant Clerical __________ Truck Driver
__________ Lithographic __________ P & M __________ Warehouse
__________ Maintenance __________ Professional __________ Other *(Specify)*

Alternate Unit Positions Taken: __________ Yes __________ No

*If Severance Involved, Check Here __________

11252.2 *Checklist continued:*

CLASSIFICATIONS AND EMPLOYEES IN ISSUE:

____ Agricultural Laborers
____ Apprentices
____ Cafeteria
____ City Pickup and Delivery Drivers
____ Confidential
____ Dispatchers
____ Employees Allied With Management *(Stockholders, etc.)*
____ Employees on Leave of Absence
____ Independent Contractors

____ Leadmen *(Working Foreman)*
____ Laboratory
____ Managerial
____ Office Clericals
____ Over-the-Road Truck Drivers
____ Part-Time or Temporary Supervisory employees
____ Plant Clericals
____ Plant Protection
____ Professionals

____ Quality Control Inspectors
____ Relatives of Management
____ Salesman
____ *(Inside,*
____ *Outside,*
____ *Route)*
____ Supervisors
____ Technicals
____ Timekeepers
____ Trainees
____ Warehouse
____ Workers Performing Dual Functions

____ Other *(Specify)* ____________________

ELIGIBILTY

____ Casual Employees
____ Probationary Employees
____ Regular Part-Time Employees

____ Replaced Economic Strikers
____ Replacements for Economic Strikers
____ Seasonal Employees

____ Students
____ Temporary Employees
____ Temporarily Laid-Off Employees

____ Other *(Specify)* ____________________

BRIEFS DUE ____________ EXTENSIONS REQUESTED BY ____________

RULING AND REASON THEREFOR ____________________

ESTIMATED TRANSCRIPT PAGES ____________ DELIVERY ________ DAYS

CONCURRENT C CASE ____ Yes ____ No REQUEST TO PROCEED: ____ Yes ____ No

____________________ ____________________
Date Hearing Officer

Attachment: Form NLRB-4069

11252.3 *Complete Record:* Neither of the example hearing officer's reports set forth in section 11252.1 or 11252.2 is intended to be an inclusive guide to the conduct of the hearing or to limit the scope and treatment of issues at the hearing. The report is not a substitute for the record. Of course, the decision is based on the record and the hearing officer must obtain a complete record on all issues.

11258–11274 *Posthearing*

11258 *Correcting the Transcript:* Since the decision and further proceedings will be based on the record, it is important that the record be accurate. The hearing officer should carefully read the transcript of testimony as it is delivered and should initiate or acquiesce in efforts to correct material errors. Correction should be made by stipulation or by motion (this is the order of preference) inserted in the record if the hearing is still in session, or submitted to the Board or Regional Director if the hearing has closed. If filed with the Board, eight copies are required; if a motion, copies should be served on each of the parties and proof of such service furnished. If filed with the Region, an original and two copies are required.

The purpose of correcting the transcript, however, is not to correct mistakes actually made at the hearing but to ensure that the testimony of witnesses and the statements of the parties and the hearing officer are accurately reflected in all material respects.

11260 *Unfair Labor Practice Charge Filed:* Where an unfair labor practice charge covering the unit involved is filed during this period, the Board should be notified of the filing in any case that has been transferred to the Board for decision. Form NLRB-511, the blank spaces of which are self-explanatory, should be sent directly to the Board.

11262 *Motions:* All motions filed after the close of the hearing by any party should be filed directly with the Board or Regional Director, as the case may be. (The Regional Office should not act as agent for the filing party in this respect.) Such motions should briefly state the order of relief sought and the grounds therefor; they must be legibly printed or otherwise duplicated. Carbon copies of typewritten material will be accepted by the Regional Director *but not by the Board.* A copy of each motion should be served immediately on each of the other parties. Where filed with the Regional Director, an original and two copies must be submitted; if filed after transfer of the case to the Board, eight copies must be filed with the Board.

11264 *Answers to Motions:* Any party may file an answer to a motion. Such answer should be promptly filed, the form and service being the same as those applicable to motions.

11266 *Consent Agreement:* If an agreement for consent election or stipulation for certification upon consent election is executed by the parties after the close of hearing in a case that has been transferred to the Board, see section 11092.4 for the procedure to be followed.

11268 *Withdrawal Request:* See section 11114 for the procedure to be followed if a withdrawal request is filed after the close of hearing.

11270 *Disclaimer:* Any disclaimer of interest filed by a union after the close of the hearing should be transmitted to the Board if the case has been transferred to the Board.

The transmittal memo should advise the Board of the positions of other parties on the action to be taken on the disclaimer and of the existence or absence of inconsistent action.

11272 *Request for Use of Shortened Name:* Where a post-hearing request to use a shortened name on the ballot occurs in a factual situation that might confuse or confound the employees, the labor organization should be advised to make its request to the Regional Director or the Board, as the case may be, in the form of a regular motion.

On the filing of such a motion, the Regional Director should (if the case has been transferred to the Board) report to the Board why, in his/her opinion, the request gives rise to possible confusion of voters. The Regional Director or the Board will then decide whether to grant the motion, remand the case for additional facts, or take other action.

11273 *Regional Director's Decision:* All Regional Director's decisions should include the following:

a. A brief description of the nature of the company's business

b. The number of employees in the appropriate unit or units involved

c. The approximate number of employees in any disputed categories.

d. The date by which a request for review must be received by the Board in Washington, D.C.

11274 *Request for Review of Regional Director's Decision:* The filing of a request for review shall not, unless otherwise ordered by the Board, operate as a stay of any action taken or directed by the Regional Director except that the Regional Director, in the absence of a waiver, may issue a notice of election but shall not conduct any election or open and count any challenged ballots until the Board has ruled on any request for review that may be filed. Nor will the granting of review stay the Regional Director's decision unless ordered by the Board.

When a request for review has been filed with the Board, the Office of Representation Case Appeals should be advised telephonically of the date of the election as soon as it has been set (see sec. 11302.1 for selection of election date).

The Regional Director may decide to treat a request for review filed with the Board as a motion for reconsideration of his/her decision. In such cases the Regional Director should promptly advise the Office of Executive Secretary before issuing a supplemental decision.

Also, whenever the validity of a showing of interest (or the sufficiency of the objective considerations in an RM case) is raised in a request for review of a Regional Director's decision, the Office of Executive Secretary should be advised of all the circumstances.

BOARD DECISION

11280–11284 *Board Decision*

11280 *Generally:* On issuance of a Decision by the Board, responsibility for action, if any, reverts to the Region without further notice.

11280.1 *Dismissal:* If the petition is dismissed, only the clerical steps involved in closing the case records need be performed. No *regional* notification to the parties is necessary.

11280.2 *Remand:* On remand by the Board, an appropriate notice of hearing on remand should be issued. The hearing on remand should be conducted within the bounds set by order of remand; otherwise, it should be conducted in the same fashion as original representation hearings.

11280.3 *Direction of Election:* If the decision contains a direction of election, efforts to arrange election details should be initiated immediately.

Election arrangements should be made, if feasible, by telephone or correspondence—i.e., without a joint conference—unless any joint conference to be held would take place in the Regional Office itself. (It should be recognized that, in a directed election as contrasted with a consent election, there is a degree of discretion reposed in the Regional Director, which serves to eliminate the need for a face-to-face "thrashing out" of each detail.) Contacts and necessary recontacts, followed by a confirming letter comprehensively setting forth arrangements, should serve to crystallize arrangements.

11282 *Motions for Reconsideration of Board Decision:* Neither the filing of a motion for reconsideration of a Decision and Direction of Election nor the announced intention of filing such a motion should delay the making of election arrangements. The Office of Representation Case Appeals should be advised telephonically of the date of election as soon as it has been set if a motion for reconsideration has been or is to be filed with the Board.

11284 *Extension of Time for Holding Election:* Although it is anticipated that a Board-directed election will be held within the time provided in the direction, there are situations when additional time may be necessary. Examples of reasons would include: unusual delay from close of hearing to direction of election; concurrent charges filed (see sec. 11730), employer's slack or closedown period, necessity for prolonged election.

Either a party or the Regional Director may move or request the Board to amend the Direction of Election to provide additional time. The motion or request should include the suggested extended date (e.g., 10 days, 30 days, or "indefinite") and, to the extent possible, the positions of the parties.

11300–11350 *Elections*

11300 *Generally:* The responsibility for the proper conduct of the election is the Regional Director's, acting through the assigned Board agent. Extreme care must be exercised both in the preparation and in the conduct of elections.

Regional Offices may conduct an election pursuant to an agreement for consent election, stipulation for certification upon consent election, Regional Director's Decision and Direction of Election, Board Decision and Direction of Election, or an expedited election under Section 8(b)(7)(C).

The arrangements and voting procedure in all elections are the same, whether they be consent (agreement or stipulation) or directed.

In the former case, they are made by the parties working with the assigned Board agent; in the latter, for the Regional Director by the assigned Board agent.

Regions are responsible for maintaining a sufficient stock of election forms, supplies, and ballot paper for normal use. At the earliest point at which it becomes known that an unusually large election will be held, consult with Washington, by telephone if necessary, to ensure timely shipment of election forms and supplies and to secure assistance with related printing.

11300.1 *Suits To Enjoin Representation Proceedings:* Whenever the Regional Director is served with a copy of a complaint in a suit to enjoin a representation proceeding, the Assistant General Counsel for Special Litigation should be advised by telephone immediately and the matter should be referred promptly to that branch and the Region's Assistant General Counsel. (See sec. 11750.1)

11302 *Date, Place, and Hours:* These are, of course, the subject of agreement in an agreement for consent election or a stipulation for certification upon consent election. But where the parties to an agreement or a stipulation agree to leave these matters to determination by the Regional Director, or where, in a *directed* election, the parties cannot agree on these details, or their agreement would cause undue delay or otherwise be unacceptable, the following are suggested as guidelines.

11302.1 *Selection of Election Dates:* The date selected should be one that balances the desires of the parties and operational considerations, along with the desirability of facilitating employee participation and prompt and timely conduct of election. Where there is a choice, dates on which all or part of the plant will be closed, on which past experience indicates that the rate of absenteeism will be high, and on which many persons will be away from the plant on company business or on vacation should be avoided; so should days immediately preceding or following holidays.

An election may not be held sooner than 10 days after the Regional Director has received the list of names and addresses of the eligible voters. Where the parties jointly wish a prompt election, presumably the employer will make the list available in less than 7 days. If the parties are pressing for an early election, the 10-day period can be provisionally calculated from the date it is estimated the list will arrive in the Regional Office.

To avoid a situation where the list is promised early to secure a prompt election, but submission is delayed, the notice of election should not be mailed until the list is in hand. However, an election may be held on the ninth day provided that day is the day before a holiday, a weekend, or a shutdown, and further provided that all parties agree. In the event of a bona fide strike or picketing situation in which all parties desire a prompt election, and the employer has furnished the list promptly, an exception may be made to the 10-day period depending on the facts of the case.

Refusal of a petitioner to agree to an early date in a consent election (to which all other parties are willing to agree) is ground for dismissal of the petition, in the absence of valid reasons for the position taken. The petition should not be dismissed, however, if the petition is suggesting a reasonably early alternative date.

The election may stretch over *several days*, where necessary; e.g., where an entire shift of workers is off for 24 hours on any given day of the week. In such cases, the hours should be limited to those actually necessary.

An election should be held as early as is practical. Thus, the full 30 days after a Board Direction of Election should not normally be taken.

When, in his/her decision, the Regional Director directs an election, the election should not be scheduled prior to the 25th day thereafter, unless the right to file a request for review has been waived. If the 25th day is a Saturday or Sunday, then the election should be set for a later, not an earlier, day. In special circumstances, consult with the Office of Executive Secretary. If a request for review has been filed, the Office of Representation Case Appeals should be notified by telephone of the date of the election as soon as it has been set. Unless the Board specifically directs otherwise, the Regional Director shall proceed to conduct the election and impound the ballots, taking care to preserve all contested issues for Board determination by such methods, viz, separate ballot boxes, the challenged ballot procedure, or as are most appropriate for each case.

11302.2 *Selection of Place to Hold Election:* The best place to hold an election, from the standpoint of accessibility to voters, is somewhere on the employer's premises. In the absence of good cause to the contrary, the election should be held there.

If an election is held away from the employer's premises, it should be held reasonably close by—say, within one to four blocks, depending on the season—in a public building (other than a post office), vacant building, social hall (other than one used as headquarters by any union party), hotel, school, church, or garage. A place normally used as a municipal voting place is particularly desirable. A tent may be used if other accommodations are not found, but, of course, adequate heat and light must be available.

The availability of places outside the employer's premises should be taken into consideration when one of the parties urges that the election be held off company property. At least the initial burden of suggesting such available places should be placed on such party, but final arrangements should be made by the Board agent. Permission to use such property should be in writing.

Rental (or tent hire) expense, if any, should be borne by the Board. (See Administrative Manual for procedures to be followed in making payment.) If the Regional Director believes that, in given circumstances, an offer of the parties to shoulder the expense equally should be accepted, he/she should clear with the Division of Operations Management.

Whether the election be held on or off company property, the actual polling place, if feasible, should be spatially and visually separated from the scene of any other activity during the voting period. There should be adequate space for all equipment and all personnel (secs. 11308—11310). An office, a production department, or a shipping room or shipping platform are examples of appropriate places. Elections should not be scheduled to be held in the unprotected outdoors on the chance that the weather will be satisfactory.

The polling place should be reasonably accessible to all voters. Also, arrangements should be made so that it is accessible to voters who may be off duty at the time they wish to vote.

If the circumstances demand, voting at more than one place should be provided.

11302.3 *Selection of Hours:* The hours of election depend on the circumstances of each case. The time of day and length of time should be adequate for all voters to cast votes either on company time or on their own time without making a trip from their homes especially to vote. (Example of possible exception: Where two or three employees in a group of several hundred work an odd shift, hours away from either the beginning or end of the shift worked by all the others.) It is better to err on the side of allowing too much time than too little.

On the other hand, the parties are prone to overestimate the time necessary for an election. In a well-arranged election, voters can easily be handled at the rate of 250 per hour per checking table, and the parties should be made aware of this. The Board has no desire to disrupt production or to occupy the time of Board agents and observers any more than is necessary.

It is usually good practice for the polls to be open at least at and about the beginning or ending of the working hours where there is one work shift, and at and about the changes of shifts where there is more than one shift. (See sec. 11332 for "split-session" elections.) Additional time extending into the working hours should be provided where voting may take place on company time. Where the circumstances warrant it, prolonged sessions, up to 12 or more consecutive hours, should be provided.

11304 *Election Equipment*

11304.1 *Election Kit:* Each Board agent should possess and maintain an "election kit" (to be augmented as necessary in any given situation) containing the following equipment:

a. 1 agent badge

b. 6 window badges and inserts for badges

c. 2 voting place signs, Form NLRB-732

d. 2 warning signs, Form NLRB-731

e. 6 instructions to observers, Form NLRB-722

f. 50 challenge envelopes

g. 2 ballot box labels, Form NLRB-730

h. 12 blank tally sheets, Form NLRB-741

i. 6 blank certification on conduct of election, Form NLRB-750

j. 6 blank tally of ballots, Form NLRB-760

k. 12 pencils

l. Note paper, carbon paper, gummed paper, scotch tape, rubberbands

11304.2 *Equipment Maintained in Regional Office:* The Regional Office should maintain an adequate supply of each of the items listed in section 11304.1 and in addition thereto:

a. Portable voting booths

b. Portable official ballot boxes

c. Knocked-down ballot boxes

d. Challenge sheets, Form NLRB-740

e. Mail ballot envelopes

f. Instruction to election agents, Form NLRB-721

g. Mail notices and instructions, Form NLRB-4175

11304.3 *Voting Booths:* Where one voting booth will be adequate for an election, the parties should not be urged to furnish voting booths. The Region's collapsible election booth should be used. Otherwise, it should be suggested that the parties supply facilities for affording privacy to voters in the marking of their ballots. (Usually, the employer will volunteer to assume the responsibility.)

Usually municipal or other governmental units will readily cooperate in the loan of facilities; or booths may be reasonably constructed. What is required is a compartment or cubicle that not only provides privacy but that also demonstrates the appearance of providing privacy.

11304.4 *Ballot Boxes:* There are three types of ballot boxes: (a) the portable bag-type official ballot box, (b) the cardboard carton that is sealed and later opened in the presence of all, and (c) the formal lock-bearing chest such as that used in political elections. If nothing is said on this subject in preelection arrangements, the Board agent will furnish the portable official ballot box or the knocked-down cardboard box. If either party expresses a contrary desire, agreeable arrangements may be made.

Under any circumstances the decision of the Board agent is final. In any case, the Agency's label (Form NLRB-730) will be attached to the ballot box used.

11304.5 *Equipment for Specific Election:* With respect to any given election, the type of equipment mentioned above will be augmented by certain items applicable to the instant election only:

a. Case file

b. Three notices of election

c. Ballots

d. Certification on conduct, filled out to the extent possible

e. Tally of ballots, filled out to the extent possible.

In addition, there should be one or more checking tables, a challenge and/or headquarters table, if necessary, and sufficient chairs for all Board agents and observers.

11306 *The Ballot:* The ballots, in all cases, are to be furnished by the Agency. Indeed, before, during, and after an election, no one should be permitted to handle any ballot except a Board agent and the individual who votes that ballot.

11306.1 *Question on Ballot:* The question on the ballot should accord with the consent agreement or the direction of election. (With respect to the wording on a "self-determination" ballot involving professional employees, see sec. 11090.1(b).) The choices on the ballot, likewise, will be dictated by the instrument that is the basis for the election.

11306.2 *Shortened Name Request:* Should a union request the use of a shortened name, whether or not the matter was raised initially at a hearing, the Regional Director may permit the use of the *additional* shortened name if, in his/her judgment, by so doing there is no possibility of the voters being misled. If used, the shortened name should be in parentheses in addition to the full name.

11306.3 *Places on Ballot:* The places on the ballot should be based on agreement, if there is agreement; on chance, if there is not. In an election involving a number of units, confusion is usually avoided by maintaining the same relative places on the ballot.

11306.4 *Color of Ballot:* The color of the ballot must not be disclosed to any of the parties prior to the opening of the polls. Different colors should be used for the ballots of different groups or units voting at the same time.

Also, the color(s) should not normally coincide with that used at the last election held among employees of the same employer.

In a "mixed" manual-mail election, the color for the mail ballot should be the same as that used in the manual election.

11308 *Board Personnel:* The number and type of Board agents involved in an election will depend, among other things, on the size, complexity, and duration of the election. The Board agent in charge of an election, with his/her supervisor, must, along with his/her other plans, anticipate and solve manning problems. In so doing, the Board agent must keep in mind the fact that the administration of Section 9 constitutes one of the most important aspects of the Agency's work; the Board agent must plan, not with respect to the routine aspects of an uneventful election, but with due regard for all potential emergencies.

Generally speaking, one Board agent will be required for each checking table at each polling place. In addition, Board agents may be required for challenge tables (one for each), for relief, and for supervision.

Due provision should be made for extended hours.

11310 *Observers:* Each party may be represented at the polling place by an equal, predesignated number of observers. The observers not only represent their principals but also assist in the conduct of the election. There may be one observer per party per checking table and one observer per party at the ballot box, plus observers necessary for relief, ushering, and other assistance.

Nonparticipating unions should not be permitted to have observers. Nor should alleged representatives of "no-union" groups be permitted to act as or to select observers.

Parties may waive the opportunity to be represented by observers, either expressly or by default (no observers appearing), but care must be taken, in any doubtful case, to accord each party every opportunity for representation.

Observers must be nonsupervisory employees of the employer, unless a written agreement by the parties provides otherwise.

The names of the proposed observers should be submitted to the Board agent in charge of an election early enough to permit a check of nonsupervisory status. If a claim is made that an observer is ineligible to act, the matter should be discussed and the parties made aware that the use of an ineligible observer may result in the election being set aside. An alleged 8(a)(3) discriminatee is eligible to serve as an observer.

If possible, at least one observer should be empowered by the party he/she represents to enter into binding agreements respecting election questions. Where each party is represented by more than one observer, one of them should be designated as *head observer*, both for this and for other "housekeeping" purposes, such as a communication channel, task assignment, etc.

Observers should be given instructions either at a special meeting held in advance of the election date, or just before the election itself.

The official badge to be worn by observers is the one provided by the Board. It is preferred, although not required, that no other insignia be worn or exhibited by the observers during their service as observers. This, of course, does not apply to regular company identification badges, the wearing of which is required by the company.

If observers are to work in shifts, or to relieve each other, all such arrangements are to be made and policed by the head observers.

11312 *Voting; Eligibility List*

11312.1 *Request for Eligibility List:* On approval of an election agreement, or on issuance of a Direction of Election, the employer should be requested to prepare a list of eligible voters and their addresses. The employer must file the eligibility list with the Regional Director within 7 days after approval of the election agreement, or after the Regional Director or the Board has directed an election. The Regional Director shall make the list available to all parties in the case. (*Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).) The Board will not permit waivers of the *Excelsior* rule with respect to furnishing either names or addresses.

a. *Election agreement:* A conformed copy of the approved election agreement should be sent to the parties on the same day it is approved. The covering letter should include the following language:

> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the undersigned within 7 days of the date of my approval of the attached agreement. I shall, in turn, make this list available to all parties to the election. In order to be timely filed, the list must be received in this office on or before (date). No extension of time to file this list may be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. Since the list is to be made available to all parties to the election, please furnish a total of ____ copies. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact (Board Agent).

b. *Directions of Elections* issued by the Regional Director should carry a footnote (inserted in the Direction of Election before the final sentence beginning "Those eligible . . .") to read:

> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the elibible voters, must be filed by the Employer with the Regional Director for Region ____ within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office (address), on or before (date). No extension of

time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

c. *Directions of Elections* issued by the Regional Director that enlarge the unit and are contingent on an adequate showing of interest should contain the following footnote:

> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region ____ within 7 days of the date of this Decision and Direction of Election. This list may initially be used by the Regional Director to assist in determining an adequate showing of interest. The Regional Director shall make the list available to all parties to the election, when he shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. In order to be timely filed, such list must be received in the Regional Office (address) on or before (date). No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

d. *Elections directed in Subregions:* In those cases where an election is directed in the territory of a *Subregion*, the second sentence of the *Excelsior* footnote in the direction of election (see b, above) will read:

> . . . Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion ____ within 7 days of the date of election . . . .

e. *Rerun election:* A new 7-day period starts from the issuance of notice of second election by the Regional Director. The footnote in section 11312.1, b, will be modified accordingly. Advice from the employer that the list has not changed, or an updating of the original list, may be accepted in lieu of a new list of names *and addresses*, but a fresh eligibility list will be needed for the voting.

f. *Runoff election:* Generally the employer will not be required to furnish a second list of names and addresses in runoff elections. The Regional Director may secure address corrections as in the initial election. In unusual circumstances, such as a change in eligibility date from the original election, a second list will be required.

g. *Expedited election:* The *Excelsior* requirement does not apply in expedited elections conducted pursuant to Section 8(b)(7)(C).

11312.2 *Service of List:* Immediately on receipt, the Regional Director should send the list by certified mail to all parties to the elections. If any party desires to pick up the list at the office, a receipt for the list should be obtained showing time and date of delivery.

11312.3 *Preparation of Eligibility List:* Specific attention should be called to the description of the unit and the period determining eligibility. Full cooperation should be offered with respect to any questions that arise in the course of preparing the list. Names (and addresses) of eligible voters should be listed alphabetically, or by clock or card number, either as a whole or by departments or units.

The list of names and addresses furnished by the employer will normally be used as the voting list. If there are two lists, both will have to be checked by the parties prior to the election.

The employer should not be required to submit a second list without addresses. However, if the voting can be carried out more expeditiously by clock number, or department number, and the list cannot be set up in this fashion *with* addresses, and the employer is willing to furnish both lists, there is no objection to making this arrangement.

11312.4 *Preelection Check:* Once the list is on hand, the Regional Office should have the parties check and approve the list promptly, to allow maximum time for ironing out eligibility questions and thus reduce the number of challenges. (If the number or nature of challenges raised is significant, consideration should be given to withdrawal of the Regional Director's approval of the election agreement or to reconvening the parties for clarification (sec. 11094).) An arrangement should be worked out for keeping the list(s) up to date, with a final check presumably made at a preelection conference.

The parties should be encouraged to air and to talk out their questions. Any agreed-on changes may be made on the face of the list, all such changes being initialed by representatives of all parties. Finally, the original list—each page—should be initialed as "inspected." If specific agreements as to eligibility can be reduced to signed writings, so much the better; but such agreements must not only be *written* and signed, they must also *expressly* provide that the eligibility issues resolved therein are final and binding on the parties, and they must not, in whole or in part, be contrary to the Act or established Board policy, in order to be considered by the Board to be final determinations of the issues involved. Where statutory inclusions or exclusions are concerned—e.g., supervisors—the stipulation should not be one only as to the ultimate legal question of eligibility to vote, but rather should be a factual stipulation of the duties and authority, or lack thereof, of the individuals involved.

After inspection, the Board agent should retain custody of the original eligibility list.

Observers may bring to the election only lists of employees they intend to challenge. They shall not maintain a list of those who do or do not vote.

11312.5 *Timely Filing of Eligibility List:* The list of names and addresses must be received by the Regional Director within the period required. The period of 7 days begins to run on the day following the date of direction of election or of the Regional Director's approval of the election agreement. For example, an election is directed or an agreement approved on Monday, March 14; you start counting on March 15; accordingly the list of eligible voters is due back in the Regional Office by close of business, Monday, March 21. Should the seventh day fall on a nonworkday, the first working day thereafter should be used for final date or receipt of the list.

An extension of time to file this list should not be granted by the Regional Director except in extraordinary circumstances. Failure to file the list timely shall be grounds for setting aside the election whenever proper objections are filed.

Where the list is received, but not in timely fashion, e.g., on the eighth day, the Regional Director should proceed with the election. If a request *not* to proceed to election is filed in such an instance, seek advice.

11312.6 *Refusal To Furnish Names and Addresses:*

a. If the employer in an R case advises in advance that it will furnish names within 7 days, but not addresses, or that it will not furnish any list until shortly before the election, the employer should be advised that such failure to comply with the requirement constitutes grounds for setting aside the election.

   If the parties enter into an election agreement anyway, the Regional Director should approve the agreement. The language of the covering letter to the parties should be modified as follows:

   > I have approved this agreement subject to the requirement with respect to election eligibility lists, of which you have previously been advised. In order to assure . . . etc. (sec. 11312.1, a.).

b. If the employer refuses to furnish the list of names and addresses yet is willing to agree to an election, but the petitioner or a union with a blocking interest is not, notice of hearing should issue.

c. If the employer refuses to furnish the list in an RM case, request advice from the Board through the Office of Executive Secretary.

d. If the employer refuses to furnish the list in an RD or UD case, the Regional Director should proceed to an election unless requested not to by the *petitioner*. Frequently the incumbent union already has all the names and addresses of the employees. However, in any case where this assumption is false (i.e., certified union has never gotten first contract, etc.), a request not to proceed from the incumbent should be honored and advice sought.

11312.7 *Failure To Furnish Eligibility List:* If the election is to be held notwithstanding the refusal of the employer to comply with the *Excelsior* list requirement, and the employer refuses to furnish even a list of names for voter eligibility purposes, it should be informed of the possibility of subpoena or, alternatively, of the affidavit voting procedure (sec. 11328). If the employer persists in refusal, the Regional Director may decide whether to issue an appropriate subpoena or make arrangements for voting by affidavit.

11312.8 *Request Not To Proceed to the Election:* If a list of names and addresses is not received at all, or a list of names only is received, the Regional Director should proceed with the election unless requested not to, in writing, by the petitioner or an intervenor with a petitioner's showing of interest (i.e., 30 percent or the equivalent).

An intervenor with less than 30-percent showing can file objections to the election, even if he/she cannot block it. The Board *may* set the election aside on grounds of failure to supply the list.

Where a request not to proceed to election is received, a subpoena to obtain the *Excelsior* list should issue.

11312.9 *Refusal; Second Election:* If the employer refuses to comply with the *Excelsior* requirement in a second election, and the first one was set aside for that reason, the Regional Director should *not* proceed to an election, even if the parties wish to. In such cases, a subpoena to obtain the *Excelsior* list should be issued, and enforcement proceedings instituted if appropriate.

11312.10 *Subpoena Enforcement Problems:* Problems on subpoena enforcement should be referred to the Assistant General Counsel for Special Litigation; a copy of the report or memorandum should be sent to the Region's Assistant General Counsel.

11312.11 *Ultimate Disposition of List:* At the election, the eligibility list serves as a *prima facie* roster of voters. After the election, it should be preserved as a part of the case file until the file is destroyed.

Once the list has been furnished and a party withdraws from the ballot, or the petition is dismissed by the Board, or the election is held and the case is closed, the Regional Director should not take any action, either on his/her own motion or that of the employer, to secure return of the list.

11313 *Subpoena To Compel Production of Election Eligibility List (Names and Addresses):* One of the problems in cases in which the employer refuses to furnish the list voluntarily is that the original election eligibility date may have become obsolete by the time court enforcement of the subpoena has been secured. To meet this problem, the subpoena should provide that the list be furnished for the currently established payroll eligibility period or for such later eligibility period as the Regional Director or his/her designated representative may subsequently specify.

In initial elections, the designated eligibility period will normally be a payroll period ending shortly before the Direction of Election or consent election agreement, and the list will be due within 7 days after the direction issues or the agreement is approved (*Excelsior Underwear*, 156 NLRB 1236, 1239–1240 (1966)). If the employer fails to file the list and a subpoena is issued at that stage, the current eligibility period specified in the subpoena will simply be the one provided for in the Direction of Election or consent election agreement.

However, in any case where the payroll eligibility period is after the Direction of Election or consent election agreement, the list will not be due until 7 days after the close of the determinative payroll period (*Excelsior, supra* at 1240 fn. 5). In such cases, a subpoena directing production of the list should not issue until the payroll eligibility period has closed and the list is due to be filed. For example, if the first election has been set aside on union objection for failure to file the *Excelsior* list, the Direction of Second Election will normally provide that the list should be filed within 7 days after the issuance of the notice of second election, and that the eligible voters will be those employed during the payroll period ending immediately before the election notice issues. In those circumstances, the notice of second election must issue before the subpoena, and the subpoena appearance date must be at least 7 days after issuance of the election notice. (It is normally desirable practice to schedule the appearance date sufficiently far in advance to allow the employer 5 days to petition to revoke the subpoena, and the Board several days to act on the petition.) At that point, the closing date of the designated payroll eligibility period will be known and can be specified as the current eligibility date in the subpoena.

Accordingly, the notice of second election should issue in such cases even though the employer has stated that it will not file the list and it is, therefore, anticipated that the second election will not actually be held. However, it will be sufficient to issue only one copy of the notice of second election with an explanatory letter indicating that copies for posting will be forwarded on a certain date. If the employer refuses to furnish the list, posting need not occur; if the employer does file the list, posting will take place in normal sequence before the election.

11313.1 *Suggested Subpoena Format:* The sample subpoena reproduced here is a suggested form only and should be modified to fit the needs of the particular case. Questions concerning subpoena format or enforcement should be directed to Assistant General Counsel, Special Litigation.

NOTE: The appearance date set forth in the subpoena should normally be scheduled sufficiently far in advance to allow the employer 5 days to petition to revoke the subpoena, and the Agency several days to act on the petition.

FORM NLRB-31
(7-89)

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To ______ [Name, title, and business address of responsible
______ person having authority to produce records] ______

As requested by ______

whose address is ______ (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE ______

______ of the National Labor Relations Board

at ______

in the City of ______

on the ______ day of ______ 19 ___ at ______ m. testify in

case ______

______

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

______

______

[See Appendix for description of subpoenaed materials]

______

______

______

SAMPLE

B-

Under the seal of the National Labor Relations Board, and authorized by the undersigned a member of the Board, this subpoena is

issued at ______

this ______ day of ______ 19 ___

Dennis M. Devaney

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

11313.1(2)

APPENDIX

The books and records of [named employer], containing the names and addresses of all employees employed during the payroll period ending [current eligibility date], or during such later payroll eligibility period as the Regional Director or his designated representative may subsequently specify, in the following collective-bargaining unit:

[Insert unit]

A list of the employee names and addresses described above, signed by an authorized agent of the employer, will be accepted in lieu of the subpoenaed books and records; provided that designated agents of the National Labor Relations Board are permitted, on request, to verify the contents of the list by examination of the subpoenaed books and records at a time and place convenient to the employer, but not later than the date of appearance specified in the subpoena, or such later date as the Regional Director or his designated representative may subsequently specify.

11314 *Notice of Election:* A standard notice of election form (NLRB-707) is used to inform eligible voters of the balloting details. A special form (NLRB-4910) is used for mail ballot elections. Notices must be posted by the Employer 3 working days prior to the election and failure to do so shall be grounds for setting the election aside if timely objections are filed.

The completion of this form requires insertions made by use of a formagraph stencil, which is a function of the clerical staff, but the basis for such action is the election order sheet (Form NLRB-700) prepared by the assigned Board agent, and the responsibility for the accuracy of the finished notice of election is the Board agent's.

Request for Review Pending: In a case in which the election is scheduled during the pendency of a request for review before the Board, the Office of Representation Appeals should be advised telephonically of the date of the election as soon as it has been set (see secs. 11274 and 11302.1). The Director of Representation Appeals should also be advised immediately by telephone of any development, such as the filing of blocking charges or a request to withdraw the petition, that might affect the Board's processing of the petition.

Copies Required: When election details are made, the necessary number of copies of notices should be determined. There should be provision for at least one copy for each location at the plant where notices to employees are customarily posted, one copy for each party and each legal representative, a reasonable additional number requested by any party, and enough extra copies for use at the election and for the case file.

Foreign Language: Notices printed in a foreign language may also be posted. If a foreign language notice is used that language may also be used on the ballot.

Insertions Required: The notice should contain, at a minimum, the printed portion thereof with appropriate insertions in the sample ballot, description of the electorate (bargaining unit as modified by eligibility date and the Board's normal additions and exclusions), the date, place, and hours of election, and split-session, multiple-site, and mail ballot elections, it should contain the date, time, and place where ballots will be mingled and counted.

Other Instructions: Appropriate additions may be inserted: e.g., "You will be notified at a time when you may go to vote"; or "If you wish, you may vote on your own time while the polls are open"; or "You may vote on company time in accordance with the attached Schedule of Voting"; or "This election is being conducted [partly] by mail. If you do not receive a mail-ballot by the close of business on ____________________, please get in touch with (call collect) (Regional Office)."

Striker-Eligibility Language: In cases where strikes are in progress at the time of the election, the Region shall insert an instruction on striker eligibility in the notice of election.

The following striker-eligibility language should be used as appropriate:

a. (If economic strike began less than 12 months before election date)

Also eligible to vote are those employees in the unit who are engaged in an economic strike that began less than 12 months before the election date, and their permanent replacements.

b. (If economic strike began more than 12 months before election date)

Also eligible to vote are those employees in the unit who are engaged in an economic strike that began more than 12 months before the election date UNLESS they have been permanently replaced.

11314.1 *Self-Determination Election:* Appropriate insertions should be made for self-determination elections. For example (where it is appropriate), the notice should explain that,

> If a majority vote is cast for (union desiring severance), the employees in this group will be taken to have indicated their desire to constitute a separate bargaining unit. If not, these employees shall remain a part of the existing unit, currently represented by (union representing production, maintenance, or larger unit).

(For other examples, see sec. 11090.1(a), self-determination elections.)

11314.2 *Supplements to Notice:* Supplements to the notice may be provided; for example, a voting schedule or a list of eligible voters. (In the latter case, the list should always be accompanied by a statement that the list is one of those *presumed* to be eligible, subject to correction on appropriate notification.) Supplements should be prepared by the Regional Office or, if prepared by the employer, should be approved by the Regional Office.

11314.3 *Posting and Distribution of Notice:* Copies of the notice should be posted in conspicuous places by the employer before the election. Posting places include, but are not limited to, bulletin boards and timecard racks.

Under some circumstances, the posting may be done by the Board agent; if a complaint of insufficient posting is lodged, the Board agent should investigate personally and take appropriate action. But care must be exercised with respect to the *authority* of the Board agent in this respect. Technically, the notice posting is subject to the permission of the controller of the premises; however, the controller's consent to post and/or remedy defective posting can usually be gained by arguments geared to the expression of desires to avoid objections by other parties and to avoid estoppel of objections on the part of the party who makes adequate notice impossible.

Notices should be distributed by mail or in person, to eligible or disputed eligible voters if the Board agent thinks this advisable; e.g., to persons not actually working during the posting period (sec. 11336.1). Where newspaper or radio publicity is recommended, because, for example, personal notification is made impossible because of lack of information as to voters' whereabouts, there should be clearance with the Division of Operations Management.

11316–11324 *Voting Procedure*

11316 *Size and Arrangement of Polling Place:* The size of a polling place depends on the nature of the election. The number of voters and the extent of the period(s) within which they may be expected to vote are controlling here.

Preparations should be made for the peak *load*. With a good eligibility list (i.e., one that is prepared in such form that names can easily be found and one that contains a minimum of mistakes) where the voters and the participating observers are reasonably intelligent and cooperative, and where there is a minimum of challenges, one checking table can process 250–400 voters per hour. Each checking table, under these circumstances, will necessitate *five* voting booths. With these guides in mind, election needs may be scaled up or down according to the given election. In elections involving less than 25 voters, no more than *one or two* booths—and, certainly no more than one checking table—are necessary. In large elections, a separate headquarters and/or challenge table may be necessary.

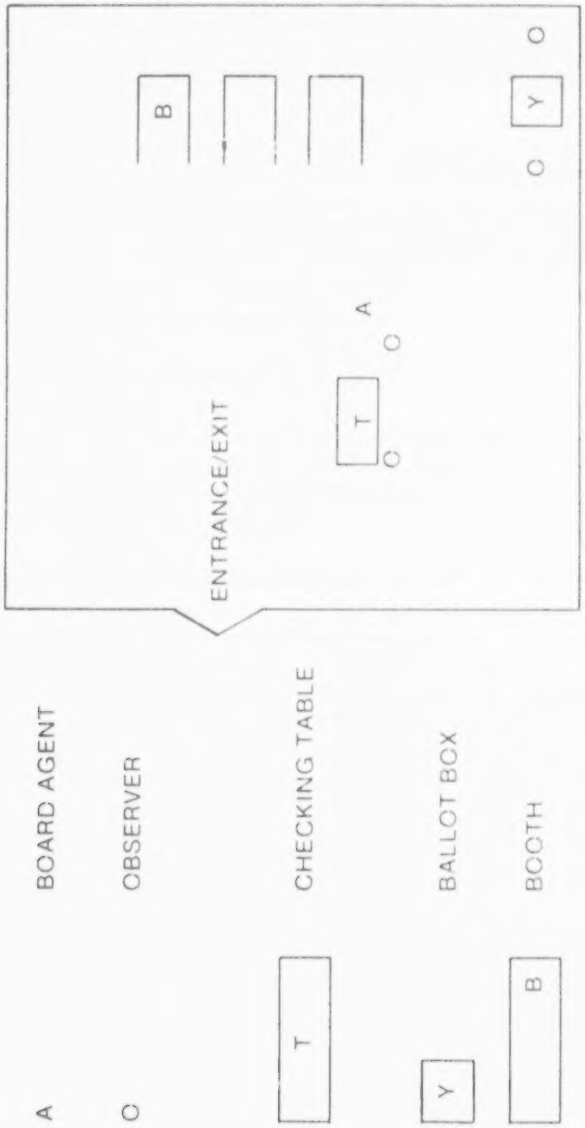
A polling place should be so arranged that the voters may, with a minimum of confusion, enter, stop at the checking table, proceed to a voting booth, go next to the ballot box, and then leave.

Enough space between entrance and checking table(s) should be provided so that a line (or lines) of voters may form without "scaring away" newcoming voters. Enough space should be provided in the area traversed thereafter so that, with a minimum of cross-conversation and "usher" assistance, the voters will perceive and do what is expected of them.

Adequate light and heat should be provided.

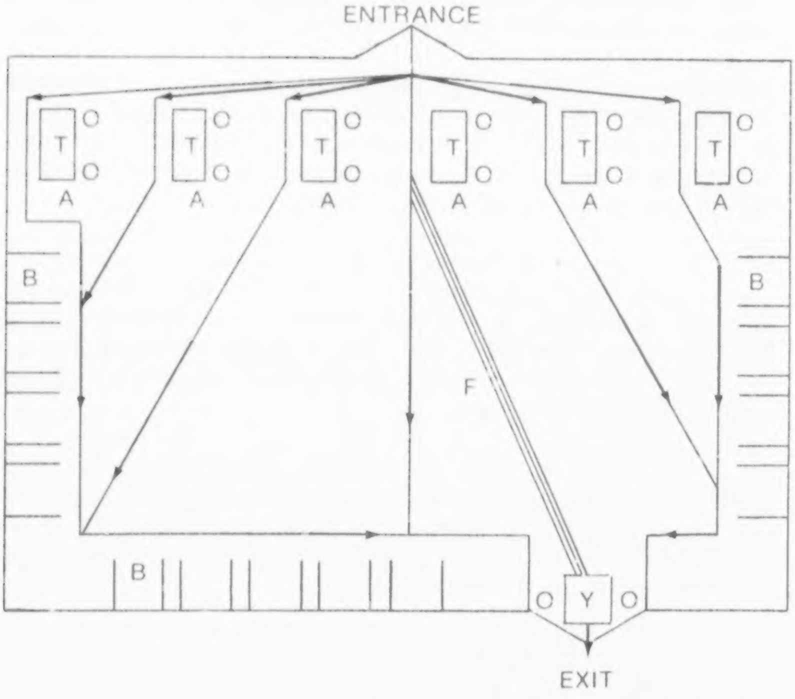
There should be at least one chair available for each participating Board agent and observer.

11316.1 *Typical Floor Plan for Small Election:*


ENTRANCE/EXIT
B
T
Y
A
C
A BOARD AGENT
C OBSERVER
T CHECKING TABLE
Y BALLOT BOX
B BOOTH

11316.2 *Typical Floor Plan for Large Election:*

A	BOARD AGENT
O	OBSERVER
T	CHECKING TABLE
Y	BALLOT BOX
B	BOOTH
F ═══	BARRICADE
→	VOTER'S LINE OF PROGRESS


ENTRANCE
T
O
A
B
F
Y
EXIT

11318 *Preopening:* The Board agent(s) and observers should assemble at the polling place from 15 to 45 minutes (depending on the complexity of the election) prior to the opening of the polls.

The roll should be taken. Substitutes should be procured for absentees, if possible—in the case of observers by the head observers, not by Board agents.

Board agent(s) should check to see that all equipment is available and in place. (Often overlooked are sharpened pencils in the booths.)

"Voting place" and "Warning" signs should be posted.

11318.1 *Distribution of Badges:* Agents should wear "Agent" badges. Observers badges should be distributed to the observers, with strict instructions as to their return. Observers are not permitted to wear observer badges when they are not acting as observers. The badge worn by the observers is provided by the Board.

11318.2 *Instructions to Observers:* If this has not already been done, a copy of the Instructions to Observers, Form NLRB-722, should be given to each observer. The observer should be given the opportunity to read it and ask additional questions. The observers should be instructed as to their specific tasks of the day.

11318.3 *Outside Representatives:* During this preelection period, if not earlier, outside representatives of the parties should be permitted to inspect the polling place. Such representatives may be present during the preparation of the ballot box. Their objections should be disposed of in accordance with their merit. Finally, *before* the polls are opened, they should be asked to leave.

(In the rare case in which the employer refuses entrance to such representatives, the representatives should be told that this is customary and that, if the employer persists in its refusal, the Board agent cannot be responsible for the outcome of the potential objections based on lack of opportunity to inspect the polls.)

11318.4 *Sealing Ballot Box:* The sealing of the ballot box should be made a formal occasion. All observers should be asked to look into it while it is open and to affirm that it is empty. Then it should be closed and securely sealed. All present should be told thereafter to stand clear of the ballot box.

11318.5 *Voters Who Arrive Before Opening of Polls:* "Early-birds" should not be permitted to vote prior to the time scheduled. Those who arrive should not be sent away but should be asked to line up. If a person must leave, he/she should be informed of the voting hours.

11320 *Opening of Polls:* The polls should be opened at the time scheduled. The Board agent will select the official timepiece and so inform the observers.

If the polls open late, the Board agent in charge should note the time and the details, including whether, and how many, individuals have come to vote and have left without voting. If no one has left, it is good practice to secure the signatures of all observers on a statement to this effect.

11322 *Progress of Voters:* On entering the polling place the voter proceeds to the checking table.

A voter entering a polling place will at least momentarily be unaware of the steps to be taken and will tend to hesitate, attempt to appraise the situation, and, perhaps, discuss it with other entering voters. The voter will invite others to "go ahead of him" and, without preventive steps, there may be a "pile-up" in this approach area. Affirmative steps should be taken to prevent confusion. If possible, the checking table should be the most prominently visible object to an incoming person. If necessary, a directional sign should point to it. If more than one checking table is involved, informative signs (e.g., "Last names A–F vote here" or "Clock numbers 501–700 vote here") should be displayed at a level high enough to be seen over the heads of others. Guide ropes anchored to stanchions—and able to be shifted as the election's needs change—will often be necessary. And, finally, a set or more of observers may be assigned to act in this area as ushers.

(The lists at the checking tables should be so divided (alphabetically, by number, etc.) that a voter's name will not be found at more than one of them. In large elections, by means of a master list at a headquarters table, a doubtful voter may ascertain "his" table.)

11322.1 *Procedure at Checking Table:* At the checking table are a set of observers, who sit behind the table, and a Board agent, who sits at its far end. Before them is the part of the voting list applicable to that table.

Observers should not be permitted to make lists of those who have or have not voted. The official eligibility list is the only record made and shows whether a person named thereon has voted. The observers' attention should be directed to the important task of checking that list and they should not be distracted by keeping other records.

The approaching voters, who should by that time have formed a line, should be asked to call out their names, last names first, as they reach the table. (They may also be asked for other identifying information, as appropriate and as formerly agreed on.) The voter should give this information; it should not be given by an observer, subject to assent by the voter. Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity, and no one questions his/her voting status, each observer at the checking table should make a mark beside the name. One party marks before the name and the other after the name both using a straight line.

Once a voter has been identified and checked off, the observers—or one of them designated by the others—should indicate this to the Board agent ("O.K.!"), who will then hand one ballot—repeat, *one* ballot—to the voter. The agent must look at each ballot to make sure that the mimeographed material has been inserted on the form.

Only the Board agent handles unused ballots. They must remain in his/her personal custody at all times.

It is at the checking table, normally, that challenges are made. (For procedure to be followed, see Challenges, sec. 11338.) In large elections, a challenged voter may be ushered to a challenge table.

11322.2 *Voting Booth:* The voter proceeds from the checking table to a voting booth. A Board agent should police the booths to see that there are no cross-conversations between occupants and that there is no more than one occupant per booth.

11322.3 *Spoiled Ballots:* A voter who spoils his/her ballot and returns it to the Board agent may be given a fresh ballot. On request the Board agent should show the spoiled ballot to the observers, provided no voting preferences are thereby disclosed. Spoiled ballots should be preserved.

11322.4 *Ballot Box:* The voter leaves the booth and drops the folded ballot into the ballot box. The observers at the ballot box should not insert the ballot for the voter; they should remain at least 3 feet away and, if the ballot "sticks" in the slot, advise the *voter* to push it through.

The voters should now leave the polling place. They should not be permitted to loiter, even to wait for other voters.

11324 *Close of Polls:* As the election approaches its close, there may be a lull in activities. This should not be an excuse for a general relaxation of formality.

The polls should not be closed early even though it may appear that 100 percent of the eligible voters have voted.

The polls should be declared closed exactly at the scheduled time determined by the Board agent as indicated by the timepiece selected prior to the opening of the polls (sec. 11320).

The closing time should not be extended just because the election opened late.

Only in unusual cases may voting time be extended at the discretion of the Board agent or by written agreement of the parties with acquiescence of the agent.

All in the voting line at the time scheduled for closing should be permitted to vote, even though the election is prolonged thereby. For those who join the line thereafter, the Board agent should follow the same procedure as for voters who arrive after the polls have been declared closed but before the ballot box has been opened. (See next paragraph.)

If a voter arrives at the polls after the Board agent has declared the polls to be closed, but before the ballot box has been opened, the Board agent should make every effort to secure agreement of all the parties as to whether such voter should be allowed to cast a ballot. If no such agreement is reached the Board agent should permit the voter to cast a ballot, which the Board agent will then challenge. This will then permit an orderly investigation of all the circumstances surrounding the matter in postelection proceedings and be of assistance to the Region and to the Board in determining whether the late ballots should be counted.

The slot in the ballot box should be sealed at the close of the polls. The Board agent should thereafter, until the count, maintain personal custody of the ballot box unless, by unanimous agreement, other arrangements are made.

At the close of the election, each observer should be asked to sign the certification on conduct of election. If one refuses to sign, the observer should be asked for reasons therefor; the explanation should be reduced to writing, which the observer should then be asked to sign. If a party had no observer, the Board agent should write "No observer" in the appropriate space. Board property (e.g., badges and signs) should be collected.

11326 *Electioneering:* No electioneering will be permitted at or near the polling place during the hours of voting, nor should any conversation be allowed between an agent of the parties and the voters in the polling area, or in the line of employees waiting to vote. Indeed, agents of the parties (other than observers) should not be allowed in the polling area during the election hours.

Neither the Board agent nor anyone else from the Agency will venture an opinion, in advance, with respect to any given *preelection* electioneering practice; and, while the parties may reach any agreements they can with respect to electioneering either prior to or during the election, such agreements will be regarded as those of the parties themselves—it cannot be predicted that violations of the agreements will or will not be valid grounds for objection to the election.

In the absence of the filing of a charge, complaints of improper preelection electioneering should not be investigated prior to the election, unless and only to the extent that they involve abuse of the Board's processes. For example, defacement of notices of election should be corrected, if brought to the Region's attention, usually by the posting of fresh copies.

The Board agent should, at all stages, note in the file information as to all electioneering incidents.

11326.1 *Observer Insignia:* It is required that all observers wear the official observer badge. It is preferred, but not required, that they wear no other insignia (see sec. 11310).

11326.2 *Observers May Not Electioneer:* Election observers may not electioneer during their hours of duty, whether at or away from the polling place. In order to remove any possibilities of electioneering, an observer away from the polling place for any reason during his/her duty hours should be accompanied by observers representing the other parties. Observers should not be permitted to engage in conversation with incoming voters.

11326.3 *Voters:* Voters need not remove insignia, even though they constitute electioneering material. Nor need their conversations be policed, unless there is talk loud enough to constitute a disturbance.

11326.4 *Area Surrounding Polling Place:* In some exceptional situations it may be desirable for the Board agent, before the polls open, to determine an area surrounding the polling place in which all electioneering is forbidden. But the Board agent should not undertake to set up such an area that cannot be policed. The Board agent periodically should check the voting area and booths for electioneering material including defaced notices of election.

11326.5 *Distribution of Literature; Sound Trucks:* There should be no prohibition (on the part of the Board agent) of factory gate distribution of literature on the day of election even though it takes place during the voting hours. However, electioneering materials visible from the polls should be removed.

If electioneering from a sound truck should penetrate to the polling place during the voting the Board agent, if possible, should take appropriate steps to have the sound lowered.

11328 *Voting by Affidavit:* Where efforts to obtain a list of eligible voters (sec. 11312.1) have failed, voting may be done by affidavit, unless, in the discretion of the Regional Director, it is more appropriate to make an effort to procure the list by subpoena.

An election may not be run partly by employer's list and partly by affidavit. Where an employer has submitted a list that is alleged to be incomplete, voters whose names are not included on the list must be voted under challenge.

11328.1 *Form of Affidavit:* Preparations should be made in advance. Mass affidavit forms should be mimeographed along the following lines:

> I, the undersigned, depose and say that I have seen the notice of election describing eligibility in the [described] election; that I was on [eligibility date], and am today, within the bargaining unit described as eligible to vote therein; and that I am, in all respects, eligible to vote therein.
>
> I have read the foregoing and, under oath, say it is true.
>
> *Signature* *Badge No.* *Address* [*etc.*]
>
> ____
>
> ____
>
> ____
>
> ____
>
> Subscribed and sworn to before me at __________ this _____ day of ________ 19 _____.
>
> ________________________
> Board agent

11328.2 *Procedure at Checking Table:* On the day of election, extra copies of the notice of election should be available for distribution to voters to be read by them as they approach the checking table. On reaching the table, each voter is asked his/her name; is then given an affidavit sheet, and is asked to read it. The voter should sign and fill in required information, after which the voter should be sworn in, either alone or with others. Right hand upraised, the voter should affirmatively answer the question, "Do you solemnly swear (or affirm) that what you have just signed is the truth, the whole truth, and nothing but the truth, so help you God?" The jurat may be completed as the page becomes filled with signatures. Affirmation will also be accepted.

The voter may then be given a ballot.

The regular challenge procedure (sec. 11338) applies equally to voting by affidavit, except that, of course, the Board agent need not challenge those not on the list.

11330 *Voting on Company Time:* Where it has been decided that eligible voters may vote on company time, specific arrangements must be made in this respect. Except where the number of employees is small—say under 25—permitting them to leave their work at will and not by specific arrangement may result in (a) undue disruption of production and (b) upsetting of the regular voting flow.

11330.1 *Voters Scheduled Alphabetically:* One method of releasing, which will ensure that (a) at any given time, a constant, small number of employees will be away from their workplaces and (b) the voting flow will be regular and steady, is to permit company time voting at preposted times *according to the first letter of the last name.* (In such cases where multiple checking tables are involved, the eligibility list should be split up by clock, badge, or card number, not alphabetically.) This method is simple to plan and simple to execute.

NOTE: Since no further method of release will be utilized, the schedule of voting posted alongside the notice of election should instruct that "Voters should leave work to vote at the times indicated. However, in the event a voter is unable to do so, he or she may vote at any time the polls are open."

11330.2 *Voters Scheduled by Work Unit:* Usually, however, the employer will prefer to shut down a whole department or work unit for the few minutes it will take for all in that department or unit to vote. Assuming adequate checking tables, good eligibility lists, and minimum challenges, 90 to 100 can be scheduled to vote in each 15-minute period; and, it can be assumed, any given voter may be expected to be away from his/her workplace no more than 10 minutes plus travel time.

11330.3 *Voting Schedule Preparation and Posting:* In preparing a voting schedule, the time just before and just after a change of shifts should be left open for those who prefer to vote on their own time, either before reporting for work or after leaving work. The schedule should note that employees may vote on their own time during the hours the polls are open, if they prefer.

The voting schedule may be posted in advance (alongside the notice of election). The legend should state whether voters may leave their work or will be released at the time indicated.

11330.4 *Method of Releasing Voters:* Releasing may be done via public address system or by traveling crew of observers (one representing each party) who may or may not be accompanied by a Board agent. If the latter method is used, the releasers should, if possible, follow the present schedule, staying together at all times. First, telling the applicable supervisor of their intentions, they should notify the employees, by word or by sign, that "You may go to vote now, if you wish." No one should be ordered to go to the polling place. The releasing should be done by the releasing crew, not by a supervisor.

11330.5 *Off-Schedule Voters:* At the polling place itself, the questions of whether a voter presenting himself/herself is off-schedule should not be raised. The method of voting at scheduled time is designed to eliminate confusion; a too-close scrutiny and policing of the execution of the schedule may result in confusion itself. Of course, a gross deviation from the schedule (e.g., large numbers of voters pouring in at the "wrong" time) may denote some independent interference with the election, a situation that may call for on-the-spot correction by the Board agent.

11332 *Split-Session Elections:* What has been said of opening and closing elections applies equally to split-session elections. Polls should be opened and closed in accordance with the times designated in the notice of election.

At the close of a voting session that is not the last one, observers should sign the certification on conduct with the added notation "Session #1" of "a.m. session." The ballot box slot should be securely sealed, and observers should be encouraged to make any markings thereon that will assure them, upon resumption of voting, that the box has not been tampered with. Badges should be collected.

Between voting sessions the ballot box is retained by the Board agent who is solely responsible for the custody of the box. This should be communicated to the parties when the election arrangements are first determined. Also, preelection arrangements should include agreement on the time and place ballots will be mingled and counted; this information becomes part of the notice of election (see sec. 11314).

11334 *Multiple Polling Places:* Where more than one polling place is open, either simultaneously, at different times, or with overlapping periods, the procedures are basically the same as those applying to a single polling place multiplied by the actual number of polling places. Each polling place should be set up along the lines noted in section 11316.

Where the polls are open simultaneously, a voter should normally be required to vote at a place (usually determined by work location) that has been designated in the notice of election. The voter's name will appear on the eligibility list only at that location. In appropriate circumstances (e.g., where delivery truckdrivers or roving repair crews' work is not subject to a predetermined reporting-in time or place), a voter's name may appear on eligibility lists at more than one polling place. In this event, the voter casts a challenged ballot at any of the polls designated for this type of employee and the challenge is cleared before any votes are counted (sec. 11340.3). If no two polling places are open simultaneously, and only one eligibility list is used, voters may normally vote at any place while voting is going on. The emphasis should be on the absolute prevention of duplicate voting.

When there are polling places in more than one Region, the Region where the case originates will have responsibility for supervision, unless otherwise designated by the Division of Operations Management. The Region in charge will furnish full instructions.

Separate certification on conduct, or a single certification properly annotated, should be used for separate polling place. Other closing procedures, such as sealing the ballot box, should also be observed at each polling place (sec. 11324).

The same ballot box may be used at more than one polling place if the voting periods do not overlap.

At the close of voting, the ballot boxes used at all polls are brought together and the contents of all the boxes are thoroughly mixed before the count takes place. (See sec. 11314 for instructions included in notice of election.)

11334.1 *Traveling Elections:* If circumstances call for it, the polls may move from place to place. An example is the situation of an election among employees of a telephone company who work, in groups of four or five, at eight different locations within a radius of 40 miles.

The voting is conducted by a traveling Board agent, usually accompanied by an observer representing each party. (Often, an observer, who knows the employees and who will check the eligibility list, is temporarily added to the crew at each location.) The opening and closing of each voting period should be accompanied by the same formalities as those involving the opening and closing of a regular polling place.

The voting hours at each place should be scheduled in advance and should appear on the notice of election, together with place and time ballots will be mingled and counted. In scheduling, potential weather, road, and automobile problems should be considered; it is better to allow for too much travel time than for too little.

Voting at each place should commence on time, if possible. Ordinarily, it should not end earlier than the scheduled hour.

11336 *Mail Ballots:* Voting may be conducted by mail, in whole or in part. Particularly where long distances are involved, or where eligible voters are scattered because of their duties, the possibility should be explored. The Regional Director should decide whether, or to what extent, mail voting should be employed.

Washington clearance is not required. Because of the absence of direct Board supervision of voting procedures, however, mail ballots are more likely to result in objections that cannot be as readily resolved as when the voting procedures are carried out in the presence of a Board agent. For this and other reasons, the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election. When all parties are in agreement that mail balloting is more convenient and desirable, however, consideration of economy in the expenditure of travel funds may properly be taken into account and may point to the prudence of utilizing mail balloting procedures. In the event that it is determined to hold an unusually large election by mail, consult with Washington to ensure timely shipment of mail ballot forms and supplies and to secure assistance with related printing.

11336.1 *Mixed Manual-Mail Election:* In a mixed manual-mail election, mail ballots should be sent only to those who cannot vote in person because of employer action (e.g., assignment of employees to duties that make it impossible or impractical for them to come to a polling place). Pipeline employees, seamen, and traveling public utility crews usually are voted by mail.

Mail ballots should not be sent to those who are in the Armed Forces, are ill at home or in a hospital, are on vacation, or are on leave of absence due to their own decision or condition. Nor should ballots be sent to those on layoff status unless all parties agree.

11336.2 *Procedure for Mail Distribution of Notice and Ballots:* Basically, the mail ballot process involves:

a. Written notice to the parties setting forth the time and date on which "mail in" ballots will be dispatched to the voters, and also setting forth a terminal time and date by which the ballots must be returned to the Regional Office. Such notice will be given the parties at least 24 hours before the time and date on which the ballots will be dispatched by the Regional Office.

b. Mailing a kit to the voter containing Form NLRB-4175 entitled "Notice of Election of Representative and Instructions to Eligible Employees Voting by United States Mail," a ballot, and a self-addressed franked "mail-ballot" envelope. The returned envelopes are then treated as prospective "voters" for purposes of identification, challenges, etc.

As in any election, a list of eligible voters is prepared and checked for accuracy. The list should contain the current or last known address of each person who is to vote by mail. A "key" number is then placed beside each name.

A voting kit is sent to each person voting by mail—not only to those agreed to be eligible but those alleged to be eligible by any party. The key number of the addressee should be inserted on the return envelope in each case.

The deadline for return of the ballot depends on the circumstances. One week's time is the minimum for distances up to 500 miles; postal authorities may be consulted for greater distances In cases involving part manual and part mail voting, the mail deadline should precede the close of the manual voting.

11336.3 *Posting of Notice:* Copies of a notice of election should be posted at conspicuous places at the employer's plant and, if any, at the employer's scattered bases of operation. At the place usually reserved for the time and place of election should appear the legend:

> Voting will be by mail. If you believe you are an eligible voter and you do not receive a ballot in the mail by [date—2 or 3 days after the last date any ballots should have been received], communicate immediately with [Regional Director, office address, and telephone number].

Preelection arrangements should include agreement on the time and place ballots will be mingled and counted; this information becomes part of the notice of election (sec. 11314).

11336.4 *Duplicate Kits:* Any such calls that are received (*collect* calls should be accepted, but not before the date indicated) should be given the action called for. If the caller, from the office records, has never been sent a mail kit, the caller should be sent one immediately, his/her name inserted on a supplemental list, and one of a new series of "key" numbers given. If the caller has moved and it appears merely that the mail is delayed by the necessity for forwarding, advise a 2-day wait unless the deadline is imminent, in which case forward a new kit bearing the old number plus "(dup)" and note the fact on the eligibility list.

If the caller has lost or spoiled the ballot or ballot envelope, the caller should also be sent a duplicate kit bearing the old number plus "(dup)."

In the event both the original and the duplicate envelopes are received from the employee to whom the duplicate was mailed, only the ballot in the envelope having the earliest postmark should be counted. In the event postmarks are not discernible, only the envelope bearing the earliest date stamp should be counted. In the event two ballots are received in one envelope the voter's ballots should be challenged. If the parties agree, only one of the ballots may be counted providing secrecy can be maintained. Those duplicates not counted should not be entered in the tally as challenged or voided ballots, but preserved for display to the parties as "duplicates." Stubs of envelopes bearing the earliest postmark or date stamp that contained the counted ballots should be attached to the envelope containing the duplicate that was not counted.

If the ballot envelope is returned *without signature*, the election clerk should, if sufficient time remains before the deadline, send a duplicate kit with a letter explaining that failure to sign voids a returned ballot.

All envelopes should be date stamped when received back by the Regional Office to establish the date of receipt. Envelopes received after the close of business on the return date should be kept separated from those timely received. The Board agent should void these ballots as "untimely" at the checkoff. However, if all parties agree to waive the deadline, such ballots will be opened and counted. The Board agent should also void ballots that are returned in envelopes with no signatures or with names printed rather than signed.

In the event that the parties do not agree to waive the time deadline for receipt of mail ballots, and thus open and count these ballots received after the deadline, the ballots should be treated as challenged ballots. Thereafter, the Board agent should attempt to resolve the challenged ballots, noting to the parties that Board policy affords employees the broadest possible participation in Board elections. As long as the election procedure is not unduly interfered with or hampered, ballots received after the established date of receipt, but before the count, may be opened and counted in certain circumstances. Matters to be considered include: (a) the reason the employee's ballot was late; (b) how late the ballot was received; (c) the length of the voting period; and (d) whether the tally commenced prior to receipt of the ballot. See *Kerrville Bus Co.*, 257 NLRB 176 (1981).

Preserve, for display to the parties, all kits returned as "undelivered."

11336.5 *Check and Count of Ballots:* The parties may select observers for purposes of identification, checkoff, challenges, etc. In mail ballot elections, since the ballots have already been marked at the time of receipt, the employer may designate supervisory employees as observers and the labor organization may designate union officials. As in a manual election, observers should be requested to sign certification of conduct on election.

At the time scheduled for the count, the returned envelopes are treated as "voters" approaching the checking table. The observers at the table make their marks alongside the respective names on the list. They may, if they wish, challenge votes.

The stubs (containing identification information) of the envelopes of the unchallenged voters are then detached. The remaining parts of the envelopes are mixed thoroughly before the ballots are extracted and counted. If there is combined manual and mail voting, the two types of ballots are commingled before the count (sec. 11336.3).

11338 *Challenges:* The challenge procedure provides a method whereby a voter's eligibility to vote may be called into question, the ruling on the question may be at least temporarily reserved, and the questioned voter may memorialize his/her desires in the event these desires should have relevance in the future—all without disrupting the regular flow of votes. When a request for review of a Decision and Direction of Election raises questions concerning the correctness of a ruling on eligibility or unit placement, the Board may opt to postpone ruling by directing that those employees in the disputed classification be permitted to vote subject to challenge.

Discharged employees who state that they believe they have been unlawfully terminated may be allowed to vote subject to challenge even absent current charges being on file in the Regional Office where the 10(b) period for filing unfair labor practice charges has not yet expired, and the discharged employees state that they intend to file charges concerning their discharge. See *Alabaster Lime Co.*, 190 NLRB 396 (1971).

Any observer has the right to challenge a voter for cause. The Board agent must challenge anyone whose name is not on the eligibility list or who has been permitted by the Board to vote subject to challenge. Also, the agent must challenge a voter if he/she knows or has reason to believe that the voter is ineligible to vote, but, in this instance only if none of the parties voices a challenge on that ground. The Board agent will not make challenges *on behalf of the parties* whether or not such parties have observers present. See *Galli Produce Co.*, 269 NLRB 478 (1984). However, if any party genuinely cannot obtain an observer, the Board agent should, on good cause alleged by the party, state that party's challenge to a voter whose eligibility that party questions. The Board agent should advise the party that he/she does not assume responsibility for assuring that the voter's ballot will be challenged. Except when directed in the Regional Director's decision or the Board action on a request for review or when a prospective voter's name is on the eligibility list, the challenge is not made on behalf of the Board but is in terms of stating the party's challenge (e.g., "the union has challenged your right to vote on the ground that you are a supervisor"). When directed by the Board, the challenge is to be made in terms of the basis for the Board's reservation (e.g., "The Board has been unable to decide whether you are eligible to vote based on the union's contention that you are a supervisor rather than an employee"). The voter should then be voted under the challenge.

The reason for the challenge should be stated at the time the challenge is made.

When a large number of challenges can be expected in a case, it may be desirable to prepare challenge envelopes in advance, to the extent possible.

11338.1 *Challenge Procedure:* When a voter is challenged, a small "c" is placed beside his/her name by the checking observers. (If the voter's name does not appear on the list, it should be added, in a supplemental list, and the "c" inserted.) The Board agent (at the checking table or, in a large election, at a challenge table) fills out the information called for on the stub of a challenged ballot envelope—the voter's name, clock number, job classification, employer, place and date of election, the reason given for the challenge, the identity of the challenger, and the agent's initials. If time permits, the agent may elicit specific information surrounding the voter's status, for insertion on the reverse side of the stub, which should be initialed by the voter.

The voter is then given a ballot and instructed to enter the booth, mark the ballot, fold it so as to keep the mark secret, and return to the voting table. On return to the voting table, the voter is given a challenged ballot envelope. The *voter* places the marked ballot in the envelope, seals the envelope, and drops it in the box. Observers stationed at the voting booth area and/or the ballot box should make sure that the challenged voter, when he/she comes out of the booth, goes to the voting table and does not drop the ballot in the box before placing it in the envelope and *sealing* the envelope.

11338.2 *Notation of Potential Challenges:* Observers may maintain lists of persons they intend to challenge, but the better practice is to permit the parties to note on the eligibility list, at the preelection check, the persons they intend to challenge. Any such marks made prior to an election, however, must be easily distinguishable from the marks to be made by observers at the election.

11338.3 *Proper Time To Challenge:* Challenges should be handled as they come up if feasible. Challenged voters should not be told to return later; however, they can be permitted to remain at the polling place awaiting a slack period.

In the oral instructions to observers, they should be urged to challenge as the voter comes up to the checking table. Normally, a challenge should be made before the questioned voter receives a ballot. But a challenge voiced at any time *before* the ballot is dropped into the ballot box should be honored.

11338.4 *Merit of Challenge Should Not Be Argued:* Arguments on the merits of a challenge should not be permitted. The challenge steps outlined above should be taken quietly and quickly, and the regular voting flow should be impeded as little as possible. The Board agent should be prepared to explain to the voter, quickly and lucidly, the measures that will be taken to protect the secrecy of the challenged ballot.

11338.5 *Specific Exclusions and Inclusions in Decision:* Persons in job classifications specifically excluded by the Decision and Direction of Election should be refused a ballot, even under challenge, unless there have been changed circumstances. The Board agent must exercise discretion in deciding whether to allow a vote (under challenge) when the person presents plausible reasons for being permitted to vote despite the exclusion, or if the person's actually being within the excluded group is not without question.

Persons in job classifications specifically included by the Decision and Direction of Election should be given a ballot and permitted to vote without challenge, unless there have been changed circumstances. Allegations of changed circumstances by the person seeking to challenge the employee should be reviewed carefully by the Board agent. Unless plausible reasons are given for the challenge, the person specifically included should be permitted to vote without casting a challenged ballot.

In all situations where reasonable doubt exists concerning whether the prospective voter falls within an included or excluded category or whether changed circumstances have altered the voters eligibility status, the voter should be voted under the challenged ballot procedure.

Further, where a request for Review has been filed and is still pending before the Board concerning the Regional Director's placement of a certain classification(s), whether included or excluded, and the election is to be conducted and ballots impounded, the Board agent conducting the election should ensure that individuals in the disputed classification(s) vote by challenged ballot. This will guarantee the integrity of the election should the Board subsequently disagree with the Regional Director's placement of the classification(s).

11338.6 *Mail Ballots Challenged:* Challenged *mail* ballots need not be placed in *challenge* envelopes. "Challenged" should be written across the face of the stub, and the information usually entered on a challenge envelope should be inserted on the reverse side of the mail-envelope stub.

11338.7 *Challenge List:* With respect to treatment of challenged ballots after the close of voting, see Count, section 11340.3, and Resolution of Challenges, sections 11360–11378. Eventually, whether challenges are or are not sufficient to affect the results of an election, a challenge list noting each person challenged, the challenger, and the reason for challenge should be made; such a list may be valuable in future related cases.

11340 *Count*

11340.1 *Time and Place:* The count should take place as soon after the close of voting as possible.

If a number of polling places are involved, the count should not begin until all ballot boxes have been collected. If the voting hours have been long and arduous, if the count is expected to be drawn out (see below), and if the personnel participating in the count are the same as those who participated in the conduct of the election, the Board agent may allow a rest period or meal period before the count. When there is any intervening interval, extreme pains should be taken not only in preserving the intactness of the ballot box(es) but also in displaying this fact.

The count may take place at any centrally located place. Typically, in the small election, the count is taken at the polling place. In a large election, if one of the polling places is large enough, the tally can take place there.

As a consideration in determining the time and place of a count, the Board agent should be aware that, using the "formal" method of counting (sec. 11340.6), each counting table, attended by a team of one caller, two unfolders, and reasonably able tallying observers, can dispose of approximately 1,000 votes per hour; considering this, as altered by the circumstances of the instant case, a fair estimate can be made of the period that will be consumed by the counting.

11340.2 *Persons Present:* The actual participants in the count are the Board agents and official observers, in the number necessary.

Also present may be members of the press and other interested persons to the extent permitted by the physical facilities. The Board agent in charge of the election should use his/her discretion in limiting numbers.

11340.3 *Clearing Challenges:* Prior to the count, the parties may wish to dispose of some challenged ballots (i.e., remove or sustain the challenge) by consent. Any such desires should be encouraged by the Board agent, but should not be *urged* if there is reluctance in any quarter.

Such clearance, on behalf of each party, should be done by someone specifically authorized so to act, not merely by any of the observers.

Finally, a challenging party may withdraw from his/her position on the basis of discussion with the Board agent and other parties. This privilege also applies to the disposition of challenges that have been the subject of requests for review to the Board, including those on which the Board has deferred ruling to resolution by the challenge procedure. In such event, however, other parties should be given the opportunity to challenge the same voter.

However, it is important that a challenge-clearance situation should not be allowed to devolve into an argument on the merits or to delay the count unduly.

a. *Examples:* The most common example of a possible clearance situation is the challenge of the voter whose name was not on the eligibility list. The Board agent should call the attention of the parties to the supplemental list of those who were thus challenged. If it turns out, and all parties agree, that the omission of a name was inadvertent and that the voter in question is eligible in all respects, the challenge may be disposed of.

   Another example is the challenge that was made by an observer by mistake, or without full knowledge but "to be on the safe side." If facts can be quickly adduced that convince all parties that the person is eligible, the challenge may be wiped out.

b. *Procedure on cleared challenges:* Cleared challenges should be given the following treatment: The details of the disposition should be noted on the reverse side of the envelope stub; parties should signify their agreement by signing or initialing thereon; the stub should be removed (and preserved in the file); and the ballot should be dropped, still folded, into the ballot box with the other ballots.

11340.4 *Mechanics of Counting:* There are two methods of counting, the informal and the formal. The Board agent in charge of the election may elect which method to use, but it is suggested that, with respect to elections in which there are or have been strong feelings between the parties, the formal method be used.

With either method, the precount announcements are the same. The Board agent will announce to those present:

> A majority of the valid votes cast will decide the election.
>
> Any ballot that clearly reflects the intention of the voter will be counted in accordance with the apparent intention, even though the marking is unorthodox—for example, even though a checkmark is used; the word "yes" is written in the yes box, or the word "no" in the no box; the mark appears within the outer rather than the inner box; there are erasures; or there are markings in more

> than one box. But a ballot the intent of which is not clear will be considered void.
>
> Also, a ballot that contains a means of identifying the voter will be counted as void.

Then, the Board agent will instruct the participating representatives as to the method of tallying (see below).

The box(es) should now be opened and the contents thoroughly intermixed. (If more than one Board agent is involved, the Board agents other than the instructing one should already have been unfolding ballots, placing them face down.)

11340.5 *Informal Method:* The Board agents, stationed on one side of a counting table, remove the ballots from the box, and place them, face up, in piles according to the preferences expressed. On the other side of the table are observers representing all parties (and behind them are other witnesses, if any), who watch the proceedings. When the box is empty—observers should be allowed to inspect it at close range—a Board agent should count aloud the different piles, displaying each ballot to the observers as it is counted. Ballots should be packaged, according to preference, in groups of 50.

11340.6 *Formal Method:* Here again, the Board agents are on the inner side of the table. All but one of them unfolds ballots, placing them face down; the other Board agent takes each ballot as it comes, calling out the preference expressed in each and placing it on the pile representing that choice.

On the observers' (and spectators') side of the counting table, there should be a tally sheet, Form NLRB-741, for the votes received by *each* party. Seated at each tally sheet should be an observer representing *another* party; that observer tallies (~~////~~ ///) each of the votes received by that party as it is called out. Behind the observer, as a check, is an observer representing the party whose votes are being tallied on that sheet. When anyone's tally reaches 50, the calling is temporarily halted while the particular check of 50 is recounted in view of the observers, and then packaged. The totals subsequently arrived at are checked against the packs. Completed tally sheets are signed by the tallier and the checker.

11340.7 *Interpretation of Ballots:* The Board agent should rule on and count each ballot as it comes up; interpretation of other-than-normal ballots should not be postponed. If that interpretation is seriously questioned, the Board agent should segregate the ballot in a challenge envelope on which the circumstances should be detailed, and the ballot should be counted as a challenged ballot.

If the voter's intention is clear despite unorthodox markings, extra markings, or erasures, the ballot should be counted in accordance with the intention displayed, unless the voter's name, number, or other means of identification appears on the ballot.

Void ballots should be counted as such and packaged separately.

11340.8 *Preparation of the Tally of Ballots:* Each copy of the tally of ballots, Form NLRB-760, should be completed in ink where possible in the presence of the tallying observers. (Form NLRB-760 reproduced below.)

Make sure that the appropriate type of election box has been checked. In an election conducted by mail, the mail ballot box should be checked.

Item 1—"Approximate number of eligible voters"—should be completed with the number originally appearing on the eligibility list *plus* those not originally on list but who nevertheless cast a ballot. Employees presently in the armed services should not be included (they should not have been on the list) unless they appeared at the polls or were included in a mail ballot.

The blank spaces in items 2–9 are self-explanatory. The "(not)" in item 10 should be crossed out or underlined, whichever is applicable. Challenges are not sufficient to affect the results, if, added to the presently trailing choice, they would not shift the majority; they are sufficient if they would shift the majority. In determining whether challenges might affect the results, it should be kept in mind that a union, to win, must receive more than 50 percent of the valid votes cast.

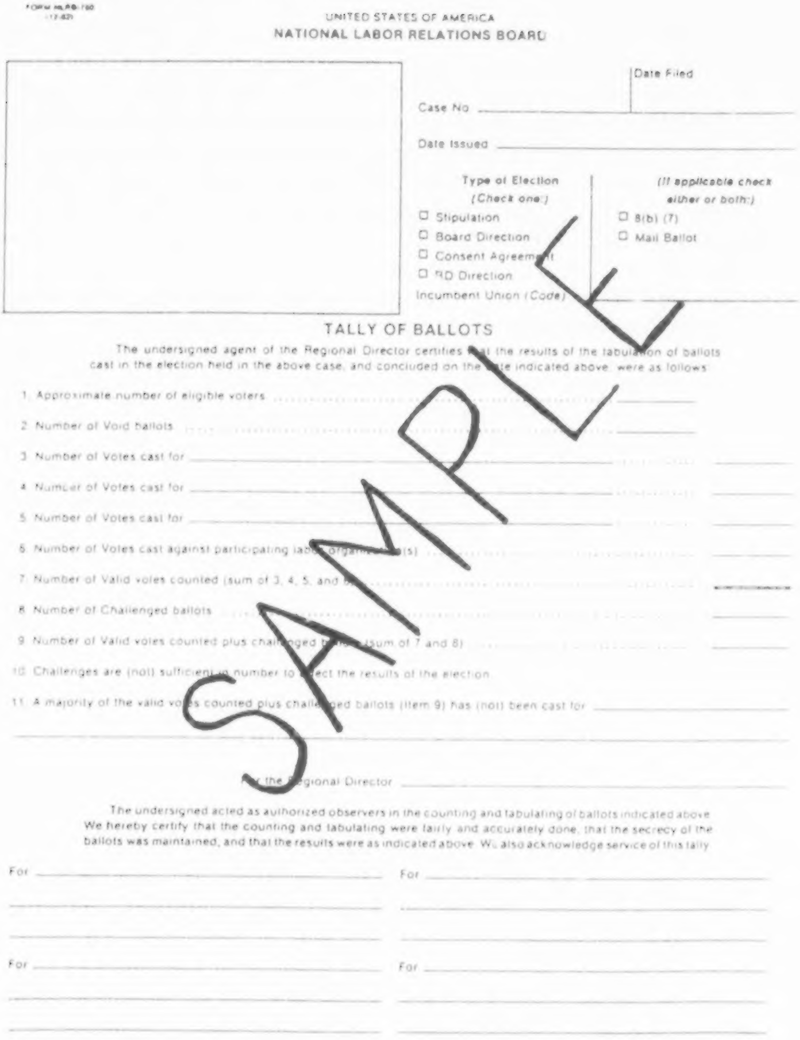
If the "(not)" in item 10 is crossed out (i.e., where the number of challenged votes *is* sufficient to affect the results), item 11 should be stricken in its entirety.

If the "(not)" in item 10 is underlined (i.e., where the number of challenged votes is *not* sufficient to affect the results), the Board agent's action with respect to item 11 may take any one of a number of forms:

> In a one-union election, the "(not)" should be crossed out or underlined, whichever is applicable, and the name of the union should finish out the sentence.
>
> In a multiunion situation, if any union or "Neither" or "None" received a majority of the valid plus challenged votes, the "(not)" should be crossed out and the name of the winning choice should fill out the line.
>
> If *none* of the choices on the ballot received a majority of the valid plus challenged ballots, the word "(not)" should be underlined, and the sentence "A MAJORITY OF THE VALID VOTES COUNTED PLUS CHALLENGED BALLOTS HAS (*NOT*) BEEN CAST FOR:" should be filled out with "any of the choices on the ballot."
>
> (See subitem b for preparation of tally when severance, craft, or professional election held.)

11340.8

a. *Sample tally of ballots:*



FORM NLRB-760
(12-82)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Case No ____________ Date Filed ____________

Date Issued ____________

Type of Election
(Check one:)
☐ Stipulation
☐ Board Direction
☐ Consent Agreement
☐ RD Direction
Incumbent Union (Code) ____________

(If applicable check either or both:)
☐ 8(b) (7)
☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters ____________
2. Number of Void ballots ____________
3. Number of Votes cast for ____________ ____________
4. Number of Votes cast for ____________ ____________
5. Number of Votes cast for ____________ ____________
6. Number of Votes cast against participating labor organization(s) ____________
7. Number of Valid votes counted (sum of 3, 4, 5, and 6) ____________
8. Number of Challenged ballots ____________
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) ____________
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for ____________

For the Regional Director ____________

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For ____________ For ____________

For ____________ For ____________

SAMPLE

b. *Tally—severance, craft, or professional election:* In a severance election, the tally of ballots of the departmental or craft group, where appropriate, should be made up first.

In the event the union seeking to represent the department or craft receives less than a majority of the valid plus challenged votes cast by that group, where appropriate, the votes cast by this group should then be pooled with those of the residual group in a tally of ballots covering the residual plus department or craft group. (The name of the union that sought the smaller group must be inserted on the tally for the larger group, with the number of votes it received duly credited.)

In an election involving professional employees only (sec. 11090.1(b)) a separate tally of ballots is prepared showing the results of the voting on each question, *provided* a majority of the valid plus challenged votes on the first question were cast in the affirmative; otherwise, there need be a tally (and count) only on the first question.

NOTE: When there are two voting groups (professional employees and nonprofessional employees), there will be one tally and the votes will be pooled if a majority of the valid plus challenged votes on the first question were cast in the affirmative; otherwise there will be no pooling and there will be a separate tally of ballots for each group.

The same voting procedure is to be followed in elections where only a single professional employee is involved.

11340.9 *Execution of Tally of Ballots:* The Board agent's name should be signed at the place indicated on the cover tally. Also, at the appropriate place on the *cover tally,* one of the participating observers or any witness authorized to act should sign, in ink, where possible, on behalf of each party. *It is the Board agent's responsibility to see that all carbon copies are legible.*

Should the certification of a party be withheld, the Board agent should attempt to ascertain the reasons and reduce them to a signed statement.

11340.10 *Service of Tally of Ballots:* As soon as the tally of ballots has been prepared a copy should be handed to a responsible official or other representative of each party, with the statement (in substance), "This is the company's [union's] copy." Status as an observer on behalf of a party does not make an individual an agent of the party for purposes of service, *F. W. Woolworth Co.*, 214 NLRB 805 (1974). However, if the observer is, for example, the petitioner in an RD case, the tally would appropriately be served on the observer.

Such service should be made whether or not the party, through a representative, has signed the tally, except that, where there has been no signature, an attempt should be made to secure a signature (on the reverse side of the original) for the receipt of the tally. Should representatives of that party refuse to sign the receipt, the Board agent should execute an affidavit of service. When a party is represented at the ballot count but declines to sign and/or accept receipt of the tally, *constructive* service has occurred, *F. W. Woolworth*, supra. Thereafter, a courtesy copy of the tally should be mailed to the party by certified mail.

If, at the time of service of the tally, one of the parties had no observers or agents present, a copy of the tally should be served by certified mail (sec. 11392.1).

11342 *Closing Checklist:* The file, at the close of an election, should contain at least two signed copies of the tally of ballots, a certification on conduct—tally sheets, if they were used—the voting list, and memos respecting abnormal occurrences.

Marked ballots, in bundles of 50, should be preserved until the case is finally closed. Unmarked ballots should be carried away from the premises or immediately destroyed.

Voting equipment should be collected (sec. 11304).

The appreciation of the Agency for whatever cooperation was rendered by the parties should be extended.

11344 *Challenged and Impounded Ballots:* The following procedures with respect to the storage of uncounted determinative challenged ballots and uncounted impounded ballots must be observed by all Regions, Subregions, and Resident Offices.

11344.1 *Determinative Challenged Ballots:* The envelopes containing determinative challenged ballots will be placed, in the presence of the parties' representatives, in a large envelope or envelopes (Form NLRB-5126). After sealing the large envelope(s), the Board agent and the parties' representatives should sign their names across the flap and the flap should be secured with transparent tape in such a manner as to ensure against accidental opening. The case name and number, the election date, a description of the contents of the envelope, the total number of large envelopes when more than one is used, and the name of the Board agent who sealed the envelope must be included on the face of Form NLRB-5126.

The envelope(s) must be stored in the office safe.

A photocopy of the face of the envelope(s) and a memorandum stating where the ballots have been stored will be placed in the *R* case file.

The Regional Director, officer-in-charge, or resident officer is the custodian of the safe. The assistant to the Regional Director, regional attorney, deputy regional attorney, or deputy officer-in-charge may be designated as agent for this purpose but the ultimate responsibility remains with the Regional Director, officer-in-charge, or resident officer.

A log should be maintained by the Regional Director, officer-in-charge, resident officer, or the duly designated agent concerning the challenged ballots that are stored in the safe. If a designated agent is appointed, the Regional Director should set forth the name of the designated agent in this log and this designation should be signed by the Regional Director.

When the large envelope(s) containing ballots is removed from the safe, the Regional Director, officer-in-charge, resident officer, or designated agent will make an entry in the log showing the removal and this removal entry will be signed by one of the aforementioned persons. The log should indicate the reason for the removal, the date of the removal, the Board agent to whom the envelope is released, and the nature of the contents authorized to be removed (e.g., all determinative challenged ballots or the identity, as shown on the large envelope, of the challenged ballots that are authorized to be removed). In addition, when some, but not all, of the challenged ballots are removed from the large envelope for the purpose of counting, such removal shall be done at the count in the presence of the parties' representatives and the

Board agent shall put a memorandum in the case file recording the number of ballots removed, their identity, their disposition, and the number of ballots remaining in the large envelope. A copy of the memorandum is to be placed in the large envelope, which should again be secured in the manner described above by the Board agent and the parties' representatives at the count and placed in the safe.

Determinative ballots concerning which the interpretation of voter intent has been questioned should be stored and secured in the same manner as determinative challenged ballots.

Where challenges are not determinative, challenged ballot envelopes should be securely stapled to and preserved in the file. Nondeterminative voided ballots should be handled in the same manner. Form NLRB-5126 is meant to be used to record all challenges while the election is in progress. Challenges that are resolved before the tally should be lined out on the face of Form NLRB-5126. Should the challenges be nondeterminative, the photocopy of the face of Form NLRB-5126 should be placed in the case file, along with the nondeterminative challenged ballot envelopes.

11344.2 *Impounded Ballots:* All ballots to be impounded will be placed in the presence of the parties in a large envelope or envelopes (Form NLRB-5126). After the envelope is sealed, the Board agent and the parties' representatives should sign and secure the envelope as described above with respect to determinative challenged ballots. The envelope(s) will be stored in the office safe and a photocopy of the envelope face, along with a memorandum regarding where the envelope is stored, shall be placed in the case file. The log used to record the storage of determinative challenged ballots shall also be used to record the storage of impounded ballots.

When the large envelope(s) containing the impounded ballots is removed from the safe, the Regional Director, officer-in-charge, resident officer, or designated agent will make an entry in the log showing the removal and this removal entry will be signed by one of the aforementioned persons. The log should indicate the reason for removal (i.e., whether to count or to file the impounded ballots) and the Board agent to whom the ballots are released. Removal of the ballots for counting shall be done at the count in the presence of the parties' representatives.

The following procedures apply to both determinative challenged ballots and impounded ballots.

11344.3 *Determinative Challenged Ballots and Impounded Ballots:* All personnel are instructed not to remove from the safe or open the envelope(s) without express approval of the Regional Director, officer-in-charge, resident officer, or designated agent.

Written approval of the Regional Director, officer-in-charge, or resident officer must be obtained before *ballots that have been counted* are finally discarded or destroyed. This approval memorandum should be placed in the representation case file. A professional employee should prepare a case file memorandum giving the date of the destruction or discarding of specified counted ballots and the name of the person who destroyed or discarded the ballots.

The following procedures should be strictly followed with respect to where and how long uncounted determinative challenged ballots and uncounted impounded ballots should be retained:

a. Uncounted determinative challenged ballots and impounded ballots are to be kept in the safe for a *minimum* of 1 year after the representation case is closed.

b. During the pendency of a related unfair labor practice case, uncounted determinative challenged ballots and impounded ballots are to be retained in the safe. A label is to be affixed to the large envelope containing the ballots setting forth the name and number of the related unfair labor practice charge and its filing date.

c. After a period of 1 year from the closing of the representation case, if there is no pending related unfair labor practice case, the Regional Director, officer-in-charge, resident officer, or designated agent may give written authorization to remove the large envelope(s) containing the determinative challenged ballots or the impounded ballots from the safe. Once the envelope(s) are removed from the safe, they are to be stapled inside the representation case file with the seal unbroken. (The ballots are *not* to be destroyed until or unless the case file is destroyed pursuant to Agency and GSA regulations.) If a related unfair labor practice case is filed after the 1-year period, the envelope(s) containing the determinative challenged ballots or impounded ballots must be returned to the safe and the procedures for handling such ballots set forth in the preceding paragraphs strictly followed.

11350 *Runoff Elections*

11350.1 *Occasion:* There can be no *runoff* of an election in which there are but two choices on the ballot. In a one-union election, the results are final (once all determinative challenges are resolved) if "Yes" receives a majority of the valid votes cast or if "No" receives at least 50 percent of the valid votes cast. Likewise in a severance election, where there are but two choices on the ballot, either "Yes" or "No" or, both of them unions, a tie vote would not result in a runoff: It would result in a pooling of votes with the residual election, if there was one; in a dismissal, if there was none.

Where, on the other hand, there are three or more choices on the ballot, an election in which (after any determinative challenges have been resolved) none of the choices receives a majority of the valid votes cast is considered an *inconclusive* election. In such case, the Regional Director should conduct a runoff election between the choices on the original ballot that received the highest and the next highest number of votes.

EXCEPTION: Where, in the original election, all choices receive an equal number of votes, or where, two choices having received an equal number of votes, a third choice receives a higher but less-than-majority vote, the Regional Director should declare this election a *nullity* and conduct another (*rerun*) election with the same choices on the ballot. If the second election results in another such nullity, the petition should be dismissed; if the results of the second election require a runoff pursuant to the principles set forth in the preceding paragraph, a runoff should be conducted. See Rerun Elections, sections 11450–11456.

FURTHER EXCEPTION: Where two or more choices receive an equal number of votes, another receives no votes, there are no challenges, and all eligible voters have voted, neither a runoff nor a rerun election should be conducted. A certification of results should be issued.

The Board agent in charge of an election, the results of which call for a runoff, should so indicate on the tally of ballots. General instructions for preparing a tally of ballots are set forth in section 11340.8. No runoff election should be held with respect to a severance election.

11350.2 *Examples:* Examples of election results illustrating the principles set forth in section 11350.1. No challenged ballots are involved:

a. *Runoff* election should be held:

(1) Eligible 17

Union A 8 (x)

Union B 8 (x)

Neither 1

(2) Eligible 77

Union A 36 (x)

Union B 0

Neither 36 (x)

(3) Eligible 10

Union A 4 (x)

Union B 4 (x)

Neither 0

(4) Eligible 19

Void 1

Union A 9 (x)

Union B 9 (x)

Neither 0

b. A *nullity, rerun* election should be held:

(1) Eligible 17 or 15

Union A 5

Union B 5

Neither 5

(2) Eligible 16

Union A 4

Union B 4

Union C 4

None 4

(3) Eligible 16 or 17

Union A 5

Union B 5

Neither 6

(4) Eligible 16

Union A	4
Union B	4
Neither	8

(5) Eligible 40

Union A	10
Union B	10
Union C	5
None	15

c. *No runoff* indicated. Certification of results should issue.

(1) Eligible 18

Union A	9
Union B	9
Neither	0

(2) Eligible 16

Union A	0
Union B	8
Neither	8

(3) Eligible 77

Union A	36
No Union	36

(4) Eligible 17

Union A	4
Union B	4
Neither	9

11350.3 *Time of Runoff:* A runoff election should not be held during the period in which objections to the original election may be filed, unless all parties, in writing, waive their rights to file objections. If objections to the original election are timely filed, the holding of any runoff election is postponed until such objections have been disposed of. If they are thus filed, subsequent objections (e.g., objections timely filed with respect to the runoff election) will not be considered to the extent that they relate to the circumstances preceding or surrounding the original election.

11350.4 *Attempt To Withdraw:* An attempt to withdraw the petition or withdraw from the ballot between original and runoff election should be dealt with in accordance with the principles set forth in sections 11098–11116. If the withdrawal from the ballot of one of the only two unions on the runoff ballot is permitted, the choices on the ballot should be converted to "Yes" or "No" with respect to the remaining union.

11350.5 *Procedure for Conduct of Runoff:* A runoff election should be held as soon after the original as it can be arranged (but not before the expiration of the objection period).

Those eligible to vote in a runoff election are those who were eligible to vote in the original election and are still in an eligible category as of the date of the runoff election. No one who was not eligible to vote in the original election can be eligible to vote in the runoff election.

The eligibility list used may be the one used at the original election or a duplicate thereof. Parties should be made aware of any changes. (Note that the list can only change *downward*; i.e., names may be eliminated.) The same general principles apply to ensuring the accuracy of a runoff list as to a list in an original election.

If the Regional Director is of the opinion that a different, more recent eligibility list should be used in the runoff, he/she should seek advice from the Board through the Office of Executive Secretary.

The standard notice of election, when used in a runoff election, should be modified so that the description of the voting unit spells out the exclusion "employees who have since [the eligibility date] quit or been discharged for cause and who were not rehired or reinstated prior to the election held on [date of original election]. . . ." In addition, the fact that this is a runoff election should be noted on the notice of election, certification on conduct, and tally of ballots.

Arrangement of polling places, duties and responsibilities of personnel, order of voting, challenge procedure, and counting procedures may be the same for runoff elections as they are for original elections.

There can be no runoff of a runoff election. There can, however, be a rerun of a runoff.

11360–11378 *Resolution of Challenges*

11360 *Basis for Investigation:* To warrant consideration, challenges to voters must have been made before the questioned ballots were dropped into the ballot box (see sec. 11338). Furthermore, challenges must have been sufficient in number to affect the results of the election.

The merits of *postelection* challenges, whether filed as such or in the guise of objections, should not be investigated.

Challenges and objections are investigated simultaneously. In an election related to an 8(b)(7) proceeding, challenges must be investigated with the utmost dispatch.

11362 *Nature and Scope of Investigation:* As part of the investigation of representation question, the investigation of challenges is nonadversary, insofar as the Government is concerned. This means that the role of the investigator must be completely nonpartisan and he/she is responsible for bringing to the Regional Director all the available facts.

In the reconciliation of these principles (to the extent that they may appear to conflict), the investigator must place the primary burden of sustaining their contentions on the parties themselves, only directing his/her efforts toward "filling in" the picture.

The investigator must give full consideration to all material elicited in the investigation whether or not urged by or known to the parties. When investigating challenges which the Board has directed to be made in its ruling on a request for review, express consideration should be given to the contentions made in the request for review of the Decision and Direction of Election.

11364 *Investigation Procedure*: Investigation procedure is the same, whether for a consent, stipulated, or directed election.

All challenges should be investigated. Some should not be ignored in the hope that the resolution of other challenges will render unnecessary the resolution of these challenges.

It is standard operating procedure to secure, in writing, the position of each party on each challenge, supporting arguments, precedents, suggestions for avenues of exploration, and names of witnesses.

Witnesses should be interviewed and, if applicable, records should be examined. Interviews should be reduced to affidavit form, if possible, and results of record examination, and other lines of investigation, should be recorded for the file.

Requests by a party that counsel or a representative be present during the interview of witnesses whose statements or actions would bind the party should be handled in accordance with the procedures employed in unfair labor practices investigations. See section 10056.1. See section 10056.6 for procedures to be used in interviewing current or former agents or supervisors of a party. Witness requests for counsel or other representative should be treated in accordance with section 10056.2.

11364.1 *Authority to Conduct Hearing:* Where the election was held pursuant to an agreement for consent election, a stipulation of certification upon consent election, or a Direction of Election, the Regional Director has the *authority* to conduct a hearing or to have a hearing conducted on his/her behalf.

In those instances where they are unable to absorb the additional workload, Regions may request the assistance of administrative law judges in the handling of the more complex hearings on objections/challenges. Requests for assistance should be submitted to the Region's assistant general counsel in the Division of Operations Management.

11364.2 *Evidence to Support Report:* The eventual report or supplemental decision should be supported by affidavits, memorandums, or correspondence in the files. Before the report or supplemental decision has been prepared, the case should be given the benefit of legal analysis. Ordinarily, before the conclusions in the report or supplemental decision conclusions have been decided on, a regional committee meeting should have been held.

To facilitate adjustment of the challenges either by withdrawal or by stipulations, the parties may be informed of the conclusions reached prior to the issuance of a report or supplemental decision.

11366 *Resolution by Agreement:* In the course of the investigation or under other circumstances, possibilities of adjustment may present themselves. Thus, a challenger may wish to withdraw a challenge, or other parties may wish to concede the ineligibility of a challenged voter.

Written agreement of *all* parties to such disposition should be procured, not only to the result but, unless it is self-evident, to the basis therefor (i.e., the facts and the theory). In the agreement, the parties should waive their rights under the Board's Rules to a Regional Director's report or decision, to file exceptions to the Regional Director's report or to file a request for review of his/her supplemental decision, to any right to a hearing in the matter, or to a Board decision; and the stipulation should provide that, on its approval by the Regional Director, he/she may proceed to open and count the challenged ballots at the time and place agreed on and/or issue an appropriate certification.

11368 *Regional Director's Report or Supplemental Decision on Challenges:* At the conclusion of the investigation the Regional Director should issue a report or supplemental decision, whichever is appropriate under the circumstances. The evidence on which the Regional Director's findings are based should be fully set forth in the report or supplemental decision. In cases where a hearing is directed the facts may be set forth in summary form insofar as issues submitted to hearing are concerned. Except in unusual cases, affidavits of witnesses should not be appended to the report or decision.

(Where objections have been filed, the report or supplemental decision on challenges should be combined with the report or supplemental decision on objections.)

11368.1 *Regional Director's Report:* The report is used where the election was held pursuant to a consent agreement or stipulation. The report also may be used where the election was directed by the Regional Director or Board but the Regional Director prefers to transfer the case to the Board for decision.

11368.2 *Regional Director's Supplemental Decision:* The supplemental decision is used where the election was directed by the Regional Director or by the Board.

11368.3 *Determination v. Recommendation:* In an agreement for consent election case, the Regional Director's report should contain a *final determination*. In a stipulation for certification upon consent election case, the Regional Director may elect to issue a report containing a *recommendation* to the Board, or may issue a notice of hearing, thereby transferring the case to the Board, or take such a combination of the two courses of action as circumstances may require. In cases of elections directed by the Board or the Regional Director, the Regional Director may either issue a supplemental decision containing a *determination*, or a report containing *recommendations* and transferring the case to the Board.

11368.4 *Contents of Report or Supplemental Decision:* The contents of the report or supplemental decision, the length and the detail, depend on the circumstances of each case.

a. *Introduction:* The opening paragraphs should contain the following: (1) a recital of the occasion; (2) basis for the election (consent, stipulated, Regional Director, or Board-directed); (3) date of the election; (4) results of the election; (5) issues (e.g., the eligibility status of named individuals); and (6) reason for each challenge, including in the case of a determinative Board-directed challenge, the reason advanced by the party for requesting review of the ruling that resulted in such Board-directed challenge.

b. *Case treatment section:* The case treatment section of the report or supplemental decision should give, by individual or category, the positions of the parties and the facts found. *Names of witnesses should not be included.*

c. *Credibility issues:* Credibility resolutions should be made, where possible; if so, the basis for the resolution should be set forth. But if, in the opinion of the Regional Director, there are factual contradictions raising substantial and material issues that could best be resolved by a hearing, the Regional Director should so proceed. But if this be the recommendation (determination), the facts available should nevertheless be recited, in summary.

d. *Final conclusions:* The factual and legal conclusions with respect to the status of each individual or category may be set forth throughout the report or supplemental decision; however, the factual and legal conclusions should *reappear* in the "Final Conclusions" section. It is in this section where the Regional Director sets forth the recommendations or determination, which should be as follows:

(1) That (named) employees are eligible to vote and that the challenges to their ballots are overruled.

(2) That (named) employees are not eligible to vote and that the challenges to their ballots are sustained.

(3) That a hearing will be held with respect to (named) challenges.

e. *Footnote:* The report or supplemental decision should include a statement of the right to file exceptions or request review, as appropriate, and the time by which such exceptions or requests must be received by the Board in Washington, D.C. With respect to cases in which challenges have been ruled on without a hearing, a statement should be included concerning the composition of the record. These statements should be included in a footnote in reports and supplemental decisions using the following patterns for wording:

(1) *Reports on challenges*

(a) *When a hearing is held:*

Under the provisions of Sec. 102.69 of the Board's Rules and Regulations exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by [date].

(b) *When no hearing is held:* Use paragraph (1)(a) above and add the following as a second paragraph to the footnote:

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits that a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

(2) *Supplemental decisions on challenges:*

(a) *When a hearing is held:*

Under the provisions of Secs. 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington by [date].

(b) *When no hearing is held:* Use the above paragraph (2)(a) and add the following as a second paragraph to the footnote:

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits that a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

11368.5 *Notice of Hearing on Challenged Ballots:* In consent and stipulated agreement situations, the report may conclude with a notice that at a given time and place, a hearing on (named) challenges be held before a duly designated hearing officer. (In stipulated election cases such notice transfers the case to the Board.) In directed election cases, the supplemental decision may also conclude with a notice that a hearing be held at a given time and place before a duly designated hearing officer.

11368.6 *Opening of Challenged Ballots:* In consent agreement situations, the report may conclude with notice that the ballots of (those who may have been held eligible) will be opened and counted at a given time and place.

However, in a directed election, the Regional Director, in the supplemental decision, may only direct that the challenged ballots be opened and counted *at a time and place subsequently to be determined "by the undersigned."* This is done in order to protect the secrecy of the ballot, because it is possible that the Board, on a request for review timely filed, may reverse the Regional Director's finding that the named employees are entitled to vote.

11368.7 *Service of Report or Supplemental Decision:* Copies should be served on all parties in all types of cases. Service should be by certified mail.

11370 *Review of Report or Supplemental Decision on Challenged Ballots*

11370.1 *Report and Recommendations on Stipulated Elections or Directed Elections Being Transferred to Board:* Review is obtained by the filing of exceptions (eight copies) (see Rules, Sec. 102.65) with the Board. In the absence of exceptions, the Board may decide the matter on the record already made or may make such disposition as it sees fit.

Any exceptions must be filed within 14 days of the issuance of the report. (See Rules, Sec. 102.69(e).) A copy must immediately be served on the Regional Director and on each of the other parties.

11370.2 *Supplemental Decision on Regional Director- or Board-Directed Elections:* The Regional Director's determination is final and binding unless the Board, on application by one of the parties, grants a request for review.

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11370.3 *Board Decision on Review:* The Board will review a Regional Director's report and will review a Regional Director's supplemental decision if it has granted a request for review. In either event, the Board will take such action as the circumstances call for. It may direct that the Regional Director or other agent issue and serve a notice of hearing and that a hearing be held on the entire matter or on specified portions; it may decide the matter forthwith on the record already made; or it may make any other disposition of the case.

11370.4 *Hearing, Report, and Exceptions:* If a hearing on challenges is directed, the hearing procedures to be followed are set forth at sections 11420–11438.

Procedures relative to the hearing officer's (or administrative law judge's) report on challenges are covered at section 11432.

The hearing officer's (or administrative law judge's) report is called into question by the filing of exceptions. See section 11434 for applicable procedural requirements.

11376 *Decision After Hearing on Challenges:* The hearing officer's/administrative law judge's report on challenges, and the exceptions thereto, will be filed with the Regional Director or the Board, depending on the circumstances. If considered by the Regional Director, a supplemental decision will be issued that may be reviewed by the Board if it grants a request for review filed by the parties. (Attach a copy of the hearing officer's report on objection/challenges to the Regional Director's supplemental decision sent to the Board and marked for Executive Secretary.) In the light of the record of the hearing, the decision may overrule or sustain certain challenges, or both; and it may, with respect to certain challenges, reserve ruling until the results of the counting of specified overruled challenged ballots are made known.

In conclusion, if the number of challenges sustained renders the remaining challenged ballots insufficient in number to affect the results of the election, the Regional Director/Board will issue a certification of representative or of results, will dismiss the petition, or will direct that a runoff election be held, whichever is appropriate; or, if challenges have been overruled as to ballots that might affect the results, the Regional Director/Board will direct that such ballots be opened and counted and a revised tally of ballots be issued by the Regional Director.

11378 *Count of Overruled Challenged Ballots:* The count of the ballots, challenges to which have been overruled, should take place as soon as possible at a time and place previously determined or to be determined by the Regional Director.

Ordinarily the parties will agree to count the ballots of overruled challenges at the Regional Office. Where the circumstances of a case justify the request of one or more of the parties to count the ballots where the original count took place, this may be done.

At the count, parties may be represented by observers, normally, one per party is adequate, but the count should not be postponed because of the absence of representatives.

The challenged envelope of each voter whose ballot is to be counted should be displayed to the observers. A *further challenge of the same voter should not be accepted.* The stub should be torn off each envelope (and preserved in the file), and the ballot, still folded, should be dropped from the envelope. After the ballots thus taken from the challenged envelopes are thoroughly mixed with each other, they should be unfolded and counted.

11378.1 *Revised Tally of Ballots:* A revised tally of ballots (Form NLRB-4168) should be prepared and signed by the Board agent and by a witnessing representative of each party.

A copy of the revised tally should be served on each party by handing it to a responsible official or other representative with the statement (in substance), "This is the company's (union's) copy." Status as an observer on behalf of a party does not make an individual an agent of the party for the purposes of service. *F. W. Woolworth Co.*, 214 NLRB 805 (1974). However, if the observer is, for example, the petitioner in an RD case, the rally would appropriately be served on him/her. Such "service" should be made whether or not the party, through a representative, has signed the tally, except that, where there has been no signature, an attempt should be made to secure a signature (on the reverse side of the original) for the *receipt* of the tally. Should representatives of the party refuse to sign the receipt, the Board agent should execute an affidavit of service.

Where a party is represented at the ballot count but declines to sign and/or accept receipt of the tally, constructive service has occurred, *F. W. Woolworth Co.*, supra. Thereafter, a courtesy copy of the tally should be mailed to the party by certified mail.

If, at the time of service of the tally, one of the parties had no agents present, a copy of the tally should be served by certified mail.

11390–11406 *Objections to Election*

11390 *Generally:* By filing objections to the conduct of an election or to conduct affecting the results of an election, a party may question the validity of an election. Objections may have the effect of invalidating an election, a result that has twofold significance: (a) the election may be rerun, and (b) the "1-year" rule of Section 9(c)(3) will not run against the invalidated election.

11392 *Basis for Investigation*

11392.1 *Objections Timely Filed:* Objections, to warrant consideration, must have been filed by the close of business on the seventh day after the tally of ballots has been prepared, and immediately made available to the parties. See Rules, Section 102.69(a); *Drum Lithographers*, 287 NLRB No. 15 (Dec. 9, 1987). Objections to an election in which a revised tally of ballots has issued are due within 7 days after the revised tally of ballots has been made available to the parties. See Rules, Section 102.69 (h). Pursuant to the Rules, Section 102.111(b)(3), objections to elections and revised tallies must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit. Objections postmarked prior to the due date, but received after the due date, are not timely filed.

Objections must be timely whether or not challenges are sufficient in number to affect the results of the elections; objections filed timely with respect to a *revised* tally of ballots, but not with respect to the *original* tally of ballots, have validity with respect to, and should serve as the basis for investigation of, only those circumstances leading up to and surrounding the *revised* count, not those leading up to and surrounding the election itself.

11392.2 *Objections Not Timely Filed:* When the Regional Director rules that objections are not timely, he/she need not issue a report or supplemental decision on objections. The Regional Director may return the objections to the party with a letter or rejection as untimely.

11392.3 *Who May File Objections:* Objections may be filed only by the following: The employer involved, the petitioner (which may be an individual), and any labor organization or individual whose name appeared on the ballot as a choice.

11392.4 *Reason for Objections:* The objections must contain a statement of the reasons therefor. The statement should be specific, not conclusionary. Such reasons constitute an essential part of the objections.

11392.5 *Duty To Furnish Evidence:* It is incumbent on the party filing objections to do so by the close of business on the fifth working day following the close of the election, and to furnish evidence[1] sufficient to provide a *prima facie* case in support thereof before the Region is required to investigate the objections. In addition to identifying the nature of the misconduct on which the objections are based, the party filing objections is required to submit evidence in support thereof within 7 days of the filing of objections or within such additional time as allowed by the Regional Director. (See Rules, Sec. 102.69(a).) This should include a list of the witnesses and a brief description of the testimony of each. An objecting party normally should not be permitted to "piecemeal" the submission of evidence but should be required to disclose promptly all the evidence in support of his/her objections. Absent the timely receipt of evidence, the Regional Director should overrule the objections.

However, any conduct that amounts to an abuse of the election process, whether or not the subject of objections, warrants investigation by the Regional Office (sec. 11394).

11392.6 *Prefiling Assistance:* Prefiling assistance in filing objections may be rendered by the Region to the extent allowable in connection with unfair labor practice charges.

11392.7 *Service on Parties:* An original and five copies of the objections must be filed with the Regional Director. The Regional Director will also serve a copy of the objections on each of the other parties to the proceeding.

11392.8 *8(b)(7) Cases:* In an election related to an 8(b)(7) proceeding, objections must be investigated with dispatch and the report or supplemental decision issued without delay.

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[1] It is noted that when an objecting party has specifically identified witnesses whom it claims would provide direct rather than hearsay evidence to support its objections, the Region should proceed with an investigation of the objections in accordance with the Board's holding in *Holladay Corp.*, 266 NLRB 621 (1983).

11394 *Nature and Scope of Investigation:* As part of the investigation of a representation question, the investigation of objections is nonadversary, insofar as the Government is concerned. This means that the role of the investigator must be completely nonpartisan, and the Board agent is responsible for bringing to the Regional Director all of the available facts. The Board agent must give full consideration to all material elicited in the investigation, whether or not urged or known to the parties.

In the reconciliation of these principles (to the extent that they may appear to conflict), the Board agent must place the primary burden of sustaining their contentions on the parties themselves, only directing effort toward "filling in" the picture. It is the duty of the objecting party to furnish the Region *promptly* all evidence in support of its objections.

It is within the Regional Director's discretion to determine initially the scope of the investigation. In the exercise of this discretion, the Regional Director may confine the investigation to matters specifically complained of in the objections or intimately connected thereto. On the other hand, the Regional Director may view the objections as having cast suspicion on the entire election process thereby justifying his or her independent investigation of matters not specifically contained in the objections. If the Regional Director receives or discovers evidence during the investigation that shows that the election has been tainted, he/she should not ignore such conduct even if it was not specifically alleged. See *American Safety Equipment Corp.*, 234 NLRB 501 (1978).

Conduct to be studied in connection with objections is that which occurred after the date of filing of the petition, or after the date of the prior election, if the objections relate to a rerun or runoff election. (Of course, other-period conduct may serve as background.)

11396 *Investigation Procedure:* Investigation procedure is the same, whether for a consent, stipulated, or directed election.

The position of each party on each objection, the supporting arguments and precedents, suggestions for avenues of exploration, and names of witnesses should be secured in writing. The objecting party should be charged with responsibility of offering full cooperation and whatever evidence is in its possession. Its failure to produce any evidence may obviate further investigation.

Witnesses should be interviewed and, if applicable, records should be examined. Interviews should be reduced to affidavit form, if possible, and results of record examination, and other lines of investigation, should be recorded in the file.

Requests by a party that counsel or a representative be present during the interview of the witnesses whose statements or actions would bind the party should be handled in accordance with the procedures employed in unfair labor practice investigations. See section 10056.1. See section 10056.6 for procedures to be used in interviewing current or former agents or supervisors of a party. Witness requests for counsel or other representative should be treated in accordance with section 10056.2

The eventual report or supplemental decision should be supported by affidavits, memoranda, or correspondence in the files.

To facilitate adjustment of the objections either by withdrawal or by stipulations, the parties may be informed of the conclusions reached prior to the issuance of a report or supplemental decision.

11396.1 *Authority To Conduct Hearing:*

a. Where the election was held either pursuant to an agreement for consent election or pursuant to a direction of election, the Regional Director *has authority* to conduct a hearing or to have a hearing conducted on his/her behalf.

b. In a stipulation for certification election, Section 102.69(d) of the Rules and Regulations permits the Regional Director to direct a hearing subject to special permission to appeal (Sec. 102.69(i)). This preserves the right of any party to object. It is anticipated that special permission to appeal will be requested "promptly," as stated in the *proviso* to Section 102.65(c) of the Rules and Regulations.

In those instances where they are unable to absorb the additional workload, Regions may request the assistance of administrative law judges in the handling of the more complex hearings on objections/challenges. Requests for assistance should be submitted to the Regions' assistant general counsel in the Division of Operations Management.

11396.2 *Circumstances Warranting Hearing:* Since there is no statutory requirement for a hearing on objections and challenges, the primary concern of a Regional Director is to afford the parties the constitutional standard of due process. Under Section 102.69(d) of the Rules and Regulations a Regional Director is authorized to issue a report or a decision on the basis of an administrative investigation or on the basis of a hearing before a hearing officer. A hearing is required "with respect to those objections or challenges which the regional director concludes raise substantial and material factual issues." Under this standard, substantial credibility issues concerning material facts are to be resolved at a hearing, and not on the basis of an evaluation of the results of an administrative investigation. See *NLRB v. Claxton Mfg. Co.*, 613 F.2d 1364 (5th Cir. 1980).

If it is apparent, on the face of the objections and the evidence submitted by the objecting party, that a hearing is warranted, notice of hearing may issue without conducting any further investigation.

Where the Regional Director in effect assumes the facts alleged in the objections but concludes as a matter of law that the facts do not justify setting aside the election, no hearing is required. Support for this view is found in *NLRB v. Air Control Products of St. Petersburg, Inc.*, 335 F.2d 245 (5th Cir. 1964).

Also, where the Regional Director recommends that an election be set aside solely on the basis of letters, handbills, or other writing, no hearing is necessary where the finding rests on the face of the writing without regard to any mitigating circumstances.

11398 *Adjustment by Agreement:* In the course of the investigation, or under other circumstances, possibilities of adjustment may present themselves.

Thus an objector may wish to withdraw its objections, or other parties may wish to concede that the election was an invalid one.

If objections to an election are withdrawn prior to the issuance of the Regional Director's supplemental decision or report, the Regional Director may approve the withdrawal and issue the appropriate certification, which should include a statement that objections were filed but were withdrawn.

Agreement of all parties to an agreement to set aside an *election* should be procured in writing.

In the agreement, the parties should waive their rights under the Board's Rules to a Regional Director's report or decision; to file exceptions to the Regional Director's report or to file a request for review of his/her supplemental decision; and to a hearing in the matter or a Board decision. The stipulation should provide that on its approval by the Regional Director he/she may set the election aside and proceed to make arrangements for and conduct a rerun election.

11400 *Regional Director's Report or Supplemental Decision on Objections:* The Regional Director should issue his/her report or supplemental decision, whichever is appropriate under the circumstances, at the conclusion of the investigation.

(Where objections were untimely filed no report should be issued. See sec. 11392.2. Where challenges also are involved, the report or supplemental decision on challenges should be combined with the report or supplemental decision on objections.)

11400.1 *Regional Director's Report:* The report is used where the election was held pursuant to a consent agreement or stipulation. The report also may be used where the election was directed by the Regional Director or the Board but the Regional Director prefers to transfer the case to the Board for decision. The evidence on which the Regional Director has based his/her findings should be fully set forth in his/her report or supplemental decision. (Except in unusual cases, affidavits of witnesses should not be appended to the report or decision.)

Where the Regional Director transfers the case to the Board for decision on objections, the report on objections should be as specific and complete as to facts and conclusions as possible. Such specificity may result in eliciting more specific exceptions and result in narrowing the issues. In any event, such specificity would set forth the facts and the rationale and minimize the argument that the party excepting to the report was not given a full opportunity to know and meet the issues.

Further, a specific, comprehensive report would present all facts to the Board and provide a better basis for a comprehensive decision by the Board.

Where, on the basis of the *ex parte* investigation, the Regional Director concludes that the facts established warrant recommending that the election be set aside without a hearing, he/she should make plain in his/her report the objective considerations demonstrating why a hearing is unnecessary and why the election should be vacated.

11400.2 *Regional Director's Supplemental Decision:* The supplemental decision is used where the election was directed by the Regional Director or by the Board.

11400.3 *Determination v. Recommendation:* In an agreement for consent election case, the Regional Director's report should contain a *final determination*. In a stipulation for certification upon consent election case, the Regional Director may elect to issue a report containing a *recommendation* to the Board, or may issue a notice of hearing, thereby transferring the case to the Board, or take such a combination of the two courses of action as circumstances may require. In cases of elections directed by the Board or Regional Director, the Regional Director may either issue a supplemental decision containing a *determination*, or a report containing *recommendations* and transferring the case to the Board.

11400.4 *Contents of Report or Supplemental Decision:* The contents of the report or supplemental decision—the length and the detail—depend on the circumstances of each case. Generally, they should include the following:

a. *Introduction:* The opening paragraphs should contain the following:

   (1) A recital of the occasion

   (2) Basis for the election (consent, stipulated, Regional Director, or Board-directed)

   (3) Date of the election

   (4) Results of the election

   (5) Objections filed, the date filed, and by whom

   (6) Summary of the objections by "counts."

b. *Count-treatment section:* The count-treatment section of the report or supplemental decision should give the positions of the parties and the facts found. *Names of employee witnesses should not be included.*

c. *Final conclusions:* The factual and legal conclusions may or may not be given at the close of each count-treatment, but they should nevertheless appear in the "Final Conclusions" section. In this section the Regional Director sets forth the recommendation or determination, which should be as follows:

(1) That (numbered) counts of the objections are without merit.

(2) That (numbered) counts of the objections have merit, on the basis of which the election is (should be) set aside, and a new (rerun) election scheduled.

(3) That a hearing should (will) be held with respect to (named) issues.

The determination, or recommendation, should account for *all objections* by count.

d. *Attachments:* Copies of pertinent documents referred to in the report or supplemental decision, such as contracts, defaced sample ballots, etc., must be attached to and made a part of the report.

e. *Footnotes:* The report or supplemental decision should include a statement of the right to file exceptions or request review, as appropriate, and the time by which exceptions must be received by the Board in Washington, D.C. With respect to cases in which objections have been ruled on without a hearing, a statement should be included concerning the composition of the record. These statements should be included in a footnote in reports and supplemental decisions using the following patterns for wording:

(1) Report on objections or challenges:

(a) *When a hearing is held:*

Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by [date].

(b) *When no hearing is held:* Use paragraph (1)(a) above and add the following as a second paragraph to the footnote:

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

(2) Supplemental decisions on objections or challenges:

(a) *When a hearing is held:*

Under the provisions of Secs. 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington by [date].

(b) *When no hearing is held:* Use the above paragraph (2)(a) and add the following as a second paragraph to the footnote:

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Supplemental Decision, are not part of the record before the Board unless appended to the request for review or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

11400.5 *Notice of Hearing on Objections:* In stipulated and consent agreement situations, the report may conclude with a notice that a hearing on objections will be held at a given time and place before a duly designated hearing officer. In directed cases, the supplemental decision may also conclude with a notice that a hearing will be held at a given time and place before a duly designated hearing officer.

11400.6 *Service of Report or Supplemental Decision:* Copies should be served on all parties in all types of cases. Service should be by certified mail.

11402 *Review of Report or Supplemental Decision on Objections*

11402.1 *Report and Recommendations on Stipulated Elections or Directed Elections Being Transferred to Board:* Review is obtained by the filing of exceptions (eight copies) with the Board. In the absence of exceptions, the Board may decide the matter on the record already made or may make such disposition as it sees fit. (See sec. 11404.)

Any exceptions must be filed within 14 days of the issuance of the report. (See Rules, Sec. 102.69(f).) A copy must *immediately* be served on the Regional Director and on each of the other parties.

11402.2 *Supplemental Decision on Regional Director- or Board-Directed Elections:* The Regional Director's determination is final and binding unless the Board, on application by one of the parties, grants a request for review. (Attach a copy of the hearing officer's report on objections/challenges to the Regional Director's supplemental decision sent to the Board and marked for Executive Secretary.)

11404 *Board Decision on Review:* The Board will review a Regional Director's report and will review a Regional Director's supplemental decision if it has granted a request for review. In either event, the Board will take such action as the circumstances call for. It may direct that the Regional Director or other agent issue and serve a notice of hearing and that a hearing be held on the entire matter or on specified portions (see secs. 11420–11438); it may decide the matter forthwith upon the record already made; or it may make any other disposition of the case.

11406 *Treating Exceptions or Request for Review as a Motion for Reconsideration:* The Regional Director may decide to treat exceptions or request for review filed with the Board as a motion for reconsideration of the report or supplemental decision. In such cases the Regional Director should promptly advise the Office of Executive Secretary before issuing a supplemental report or second supplemental decision.

11420–11438 *Hearing on Objections/Challenges*

11420 *Generally:* To the extent they are adaptable, the procedures discussed herein apply to hearings on challenges as well as hearings on objections. Where, in the same case, there are dispositive challenges in, as well as objections to, the election, generally the hearing should cover both aspects.

11420.1 *Procedure if Unfair Labor Practice Charge Involved:* In the event there are objections to an election and unfair labor practice charges both of which cover, in whole or in part, the same grounds, the complaint and objections normally should be *consolidated* for hearing.

In such case (and even though challenges also may be consolidated), the procedures applicable to the hearing are mixed. To the extent that alleged unfair labor practices are involved, the procedures set forth in sections 10380–10412 should be adhered to; to the extent that objections (and/or challenges), the substance of which does not coincide with the substance of the alleged unfair labor practices, are involved, the procedures set forth in this section should be adhered to; to the extent that there is overlapping, ambiguity, or conflict, the procedures set forth in sections 10380–10412 should be adhered to.

11420.2 *Related Objections and Charges:* Where there are overlapping or related objections and charges, the Regional Director should consolidate the cases for hearing before an administrative law judge. The administrative law judge will thereafter make appropriate recommendation in a decision and, except in cases where the election was held pursuant to an agreement for consent election, the case will be transferred to the Board. In situations involving an agreement for consent election, the cases will be severed and the R case transferred to the Regional Director for further processing.

Unless the election had been held pursuant to agreement for consent election, the order directing a hearing on objections in a representation case, which is to be consolidated with a hearing on unfair labor practice charges, should include the following language:

> IT IS HEREBY ORDERED, pursuant to Section 102.33 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated for

> the purposes of hearing, ruling, and decision by an administrative law judge and that thereafter [here designate the R case] be transferred to and continued before the Board in Washington, D.C., and that the provisions of Sections 102.46 and 102.69(e) of the abovementioned Rules shall govern the filing of exceptions.

Where the election had been held pursuant to agreement for consent election, the order should include the following language:

> IT IS HEREBY ORDERED, pursuant to Section 102.33 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated for the purposes of hearing, ruling, and decision by an administrative law judge and that thereafter [here designate the R case] shall be severed and transferred to the undersigned Regional Director for further processing.

In agreement for consent election cases the administrative law judge should issue an appropriate order as a part of the decision severing and transferring the R case to the Regional Director for appropriate action.

11422 *Nature and Objective:* A hearing on objections/challenges is a formal proceeding designed to elicit information on the basis of which the Regional Directors or the Board may discharge their/its duties under Section 9 of the Act. As such, insofar as the Government is concerned, it is investigatory and not adversary.

The hearing on objections/challenges should be conducted with the same formality as is accorded a representation question hearing.

11424 *Participating Board Personnel:* The hearing on objections/challenges is conducted by an administrative law judge or by a hearing officer. The Regional Director may, if it is desired, assign an attorney designated as counsel for the Regional Office to appear at the hearing.

11424.1 *Administrative Law Judges:* If the Board's order directing that a hearing be held specifies that it be before an administrative law judge, or if the hearing is ordered by the Regional Director who is of the opinion that an administrative law judge should be assigned to the case, arrangements for procuring an administrative law judge (as well as for clearance on a hearing date) should be made through the appropriate chief or presiding administrative law judge. (See 10258.)

11424.2 *Hearing Officer:* The hearing officer should be a Board agent from the Region in which the hearing is to be held, except:

a. If a hearing is directed by the Regional Director or the Board where an issue involves the conduct of a Board agent

b. If a hearing is directed by the Board concerning credibility findings by the Regional Director.

There may be unusual circumstances that, in the Regional Director's judgment, warrant further exceptions to this procedure. In any event, all requests and arrangements for the procurement of a hearing officer from outside the Region should be made through the Division of Operations Management.

11424.3 *Functions and Duties of the Hearing Officer:* The hearing officer conducts the hearing; opens, adjourns, and closes the hearing; and maintains order while the hearing is in session. The hearing officer hears and passes on the admissibility of oral testimony and documentary evidence offered.

The hearing officer is *not* an advocate of any position but must be impartial in his/her rulings and in conduct both on and off the record.

The hearing officer should *not* have access to the Region's case file, nor direct or indirect knowledge of its contents, except to the extent that he/she has been furnished the pleadings in advance and to the extent developed by the evidence presented at the hearing. Therefore, although the hearing officer should take pains to see that the record contains all relevant and competent evidence, his/her efforts in this direction will be without the benefit of the material elicited in any prehearing investigation.

The hearing officer may participate. He/she may cross-examine, call and question witnesses, and call for and introduce appropriate documents. It should be recognized, however, that, under some circumstances, the hearing officer's pursuit of his/her responsibility for the development of a full record may lead to an appearance of undue assistance to one party or another. The hearing officer should exercise self-restraint, should give the parties prior opportunity to develop points, and should refrain from needlessly "taking over." The hearing officer must keep constantly in mind that the parties will expect his/her objective and considerate regard both of their interests and persons.

The hearing officer should keep the record as short as is commensurate with its being complete. By receiving stipulations and by excluding irrelevant and cumulative material, the hearing officer should achieve an uncluttered record.

Finally, it is the ultimate duty of the hearing officer, on consideration of the record, to make findings, conclusions, and recommendations.

11424.4 *Counsel for the Regional Office; Functions and Duties:* The primary function of counsel, if one is utilized, is to see that evidence adduced during the Region's investigation becomes part of the record.

Counsel may voice objections; cross-examine, call, and question witnesses; and call for and introduce appropriate documents. If the information in counsel's possession warrants it, he/she should seek to impeach the testimony of witnesses called by others.

Counsel for the Regional Office should not offer new material until it is certain it will not be offered by one of the parties. Moreover, in this respect and in attacking evidence that has been presented, counsel must exercise self-restraint, must be impartial, and must display the appearance of impartiality.

Counsel for the Regional Office should be thoroughly familiar with the contents of the regional case file and, during the hearing, should have it in his/her possession and should assure that the evidence adduced during the investigation is made part of the record.

In this connection, it should be noted that counsel for the Regional Office does not have the duty of *sustaining* the Regional Director's report or supplemental decision.

11426 *Prehearing Procedures*

11426.1 *Regional Preparation:* Counsel for the Regional Office should acquire a thorough knowledge of the contents of the case file. Whether or not counsel was the Board agent assigned to the original investigation of objections, he/she need not reinterview witnesses.

Counsel should prepare a tentative trial brief. This trial brief need not be as detailed as that for a C case hearing (sec. 10336); its main functions will be that of a checklist of items to be covered, whether by counsel for the Regional Office or by other parties.

11426.2 *Notice of Hearing:* The Regional Director should prepare a notice of hearing.

The form notice cannot be used; the notice must be tailored, "setting" the issues by reference to the order directing a hearing.

Copies should be served on all parties.

11426.3 *Hearing Officer Preparation:* The hearing officer/administrative law judge should be sent all formal papers including a copy of the Regional Director's report or supplemental decision on objections/challenges, the exceptions, and the order setting up the hearing. Working from this material alone, he/she should familiarize himself/herself with the general precedents relative to the indicated issues.

11426.4 *Postponements:* Prehearing postponements are effected in a manner similiar to those applying to C cases, and R cases generally.

Form NLRB-4338 should have been sent to each party with the notice of hearing, and its requirements should be strictly adhered to.

11428 *Hearing Procedures*

11428.1 *Generally:* The frame of reference for the hearing on objections/challenges is the order directing the hearing. Material not bearing on the issues posed therein should not be offered; if offered, it should not be received.

The *procedures* used in a hearing on objections/challenges are similar to those used in a C case or in an R case.

11428.2 *Opening Statements:* At the beginning of the hearing, the hearing officer/administrative law judge should make the following statement:

> The hearing will be in order.
>
> This is a hearing before the National Labor Relations Board in the matter of ____________________ Case __________ pursuant to the order of the Regional Director/Board dated __________.
>
> The hearing officer/Administrative Law Judge conducting this hearing is ____________________.
>
> The official report makes the only official transcript of these proceedings, and all citations in briefs and arguments must refer to the official record. In the event that any of the parties wish to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer/Administrative Law Judge and not to the official reporter.
>
> Statements of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings. Objections and exceptions may, on appropriate request, be permitted to an entire line of questioning.
>
> It appears from the Regional Director's/Board's order dated __________ that this hearing is held for the (limited) purpose of taking evidence concerning ______________.
>
> In due course the hearing officer/Administrative Law Judge will prepare and file with the Regional Director/Board his/her report and recommendations in this proceeding and will cause a copy thereof to be served on each of the parties. The procedure to be followed from that point forward is set forth in the Board's Rules and Regulations, more particularly Section 102.69 thereof.
>
> Will counsel and other representatives for the parties please state their appearances for the record? For the Regional Office? . . . .

> Are there any other appearances? . . . . Let the record show no (further) response.
>
> You may proceed Mr. ________________ (counsel for the Regional Office).

Then, after counsel for the Regional Office has introduced the formal papers counsel should say:

> I am here as representative of the Regional Office to see that the evidence adduced during the investigation is made available to the hearing officer/Administrative Law Judge. In pursuance of this function, I may ask some questions and, if necessary, call witnesses.
>
> I want to say that I am not here to support any preconceived positions. My services are equally at the disposal of the hearing officer/Administrative Law Judge and all parties.

11428.3 *Introduction of Formal Papers:* The formal papers consist of the order directing hearing; the notice of hearing and any amendments thereto; any motions or requests on which prehearing rulings have been made that bear on the issues to be resolved by the hearing; and affidavits of service pertaining to any of the above.

In advance of the hearing, they should have been placed in one legal backing, in chronological order from the bottom upward.

The formal papers should be marked as Board's Exhibit 1(a)-( ) and should be offered by counsel for the Regional Office, if one is utilized; otherwise, they will be offered by the hearing officer or administrative law judge.

11428.4 *Order of Presentation:* Following the receipt of the formal papers and the explanatory statement of counsel for the Regional Office, the party that filed the objections or the party that made the challenges in question should be asked to proceed. After he/she has put in his/her case, opposing parties should put in their case. Counsel for the Regional Office normally should refrain from introducing evidence (as contrasted with attacking evidence being introduced by other parties) until other parties have completed their cases—and then only if the evidence involved is essential to the completeness of the record. See section 11424.4.

11428.5 *Production of Statements of Witnesses:* The production of statements of witnesses at a postelection hearing is governed by Section 102.118(c) of the Board's Rules and Regulations. That section provides essentially that, after a witness called by any party has testified, any statement of the witness in the possession of the Board or the General Counsel that, under Section 102.118(b), would be producible at an unfair labor practice hearing should, on motion of any other party, be produced in accordance with the procedures applicable in unfair labor practice hearings. The officer presiding at the hearing will exercise the authority that the administrative law judge would exercise at an unfair labor practice hearing. It should be noted, however, that, since the statement is to be used solely for the purpose of cross-examining the witness, the party calling the witness is not entitled to production of the statement unless the circumstances would permit him to cross-examine.

11430 *Briefs:* Although, technically, briefs to hearing officers (or administrative law judges) are filed after the close of the hearing, they are in a real sense an extension of the hearing. Therefore, their treatment appears under The Hearing, sections 11244–11246.

In a hearing on objections/challenges, the parties have no right to file briefs except where the order directing the hearing provides for the filing of briefs. In the usual case, the parties would have filed briefs with the Board in connection with exceptions to the Regional Director's report. Where a hearing had been directed, the parties have an additional opportunity to file briefs after the hearing officer has filed his/her report. Briefs in addition to those should be unnecessary but, where allowed, the hearing officer/administrative law judge has full authority to set original and extended time limits for filing. It is assumed, however, that, in the interests of resolving a representation question, no more time than is absolutely necessary will be allowed.

Counsel for the Regional Office is not expected to file a brief in a hearing on objections/challenges. If it is believed that a brief should be filed in a given case, prior clearance should be sought from the Division of Operations Management.

11432 *Hearing Officer's Report on Objections/Challenges:* The order directing that a hearing on objections/challenges be held will normally, but not always, specify that the hearing officer/administrative law judge prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations as to the disposition of each issue. The order directing hearing will specify whether the report should be served on the Regional Director or the Board.

The form and content of the report will vary according to the case. Normally, it should note the occasion for the hearing (the order), narrate the background material, and then recite factual findings. Questions of credibility should be resolved, with the basis for resolution being cited. Finally, appropriate recommendations should be made to the Board or Regional Director, whichever is appropriate.

In the report, the parties should be reminded of the requirement with respect to exceptions, as set forth in the order directing hearing. A copy of such report shall be served on all parties. (If the report is filed with the Board, a copy should also be served on the Regional Director.)

The hearing officer normally should file his/her report with the Board or Regional Director not later than 14 days after the close of hearing.

11434 *Exceptions to Hearing Officer's Report:* The order directing hearing usually specifies that, within 14 days (see Rules, Sec. 102.69(i)(2) and 102.69(f)) of the issuance of the report, any party may file exceptions (sec. 11402.1) thereto with the Board (eight copies) or with the Regional Director (an original and one copy) immediately serving copies on all other parties. If filed with the Board, a copy should be served on the Regional Director. In the absence of exceptions, recommendations in the hearing officer's report may be adopted.

Where the report is filed with the Board, the Regional Director should not file exceptions without clearance from the Division of Operations Management.

11436 *Decision:* The Board, or Regional Director, as the case may be, having considered the hearing officer's/administrative law judge's report on objections/challenges and the exceptions thereto, will issue a decision. The decision may sustain or overrule the objections, in whole or in part. If it sustains the objections, in any part, the order will set aside the original election. In the normal case, the direction of second (rerun) election will provide that the new election be held "at such time as the Regional Director deems appropriate." Normally the "eligibility date" will be designated as the latest completed payroll period preceding the date of issuance of the notice of election.

11438 *Withdrawals After Election Invalidated:* Occasionally, between the setting aside of an election (by the Regional Director or by the Board) and the conduct of a rerun, there may be an attempted withdrawal of the petition, from the consent arrangement, or from the ballot. Such an attempt is considered a postagreement/posthearing request, and the principles applicable thereto (see secs. 11098 through 11116) should be employed.

11450–11456 *Rerun Elections*

11450 *Occasion:* A rerun election is conducted when the original election is a nullity by virtue of its results (sec. 11350.1) or because it is set aside, either by the Regional Director or the Board (sec. 11436).

11452 *Timing and Conditions:* The rerun election should be held as soon as possible after the original election is set aside, within the terms of the enabling determination or direction. It may be delayed by the terms of the determination or direction, or it may be delayed just as any election may be delayed by the pendency of a concurrent C case.

If necessary (in "Board" situations), an extension of time should be requested. (See sec. 11284.)

The voting unit(s) or group(s) in a rerun election will be the same as that in the original election. The payroll period determining eligibility, however, will be as set forth at section 11436.

The preparation and preelection check of the voting eligibility list should follow the principles applying to original elections as set forth at section 11312.1(e).

The date, hours, and place and general conditions should be set in accord with the principles applying to original elections.

11452.1 *Notice of Election:* In accordance with the Board decision in *Lufkin Rule Co.*, 147 NLRB 341 (1964), the standard notice of election may be modified to include a paragraph explaining why the original election was set aside.

This language should be included (a) upon request, or (b) even where no request is made, if in the judgment of the Regional Director the situation warrants it.

The language adapted from the *Lufkin* decision is as follows:

NOTICE TO ALL VOTERS

> The election conducted on ____________ was set aside because the National Labor Relations Board found that certain conduct of the (Employer) (Union) interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

While the Board looks favorably on granting requests to use this language in all cases where an election has been set aside and a new election directed, this should not be viewed as mandatory. The Regional Director may wish to deny a request where the parties have agreed that an election be set aside on the basis of a stipulation although there has been no determination of the merits of the objections.

If the ground for setting aside the election is based on third-party or Board agent conduct, the language in the notice may need revision. A request for advice should be submitted to the Executive Secretary if any problems or difficulties are encountered, such as if the employer refuses to post a notice of new election, so modified.

If the *Lufkin* language is not used, the notice of election should be modified to the extent that it should explain that the election being announced is a "rerun of the election held on [date of original election]."

11454 *Voting Procedures*: The voting procedures of a rerun election are the same as those of an original election, except that the certification on conduct should indicate that the election is a rerun.

11456 *Count, Tally, etc.*: The count and preparation and service of tally are the same as for an original election except that the tally of ballots should indicate that the election is a rerun.

As in the case of an original or a runoff election, the number of challenges may be sufficient in number to affect the results of a rerun election. If so, the machinery to resolve challenges (sec. 11360–11378) should be put into operation.

The results of a rerun election may call for a *runoff* election but *not* if the original election that is being rerun was itself a severance or runoff election. There can be no runoff of a severance or runoff election.

The usual period of 7 days for filing objections applies to a rerun as well as to other elections. (See Rules, Sec. 102.69(a).) On the proper filing of objections, the procedure described for the treatment of objections will come into play. If the rerun election is set aside, there can be a second rerun (to which the same rules apply).

11470–11480 *Certification*

11470 *Generally:* The ultimate product of a representation election is a certification. If a union has received a majority of the valid votes, a certification of representative should be issued. If a union has not received a majority of the valid votes cast, a certification of results should be issued. (Unless the contrary is indicated, the term certification will be used herein to denote either.)

Certification is not issued on the basis of any results calling for a runoff. Nor is it issued with respect to an invalid election or one in which the number of challenged votes is sufficient to affect the results. Thus, if objections are timely filed or if the number of challenged votes is sufficient to affect the results, such issue(s) must be resolved before certification can issue.

A certification issued by the Regional Director has the same force and effect as one issued by the Board.

11472 *Issuance of Certification*

11472.1 *Elections Pursuant to an Agreement for Consent Election:* In *all* cases, the certification will be issued by the Regional Director.

11472.2 *Elections Pursuant to a Stipulation for Certification Upon Consent Election:*

a. The certification will be issued by the Regional Director where no objections are filed (or, if filed, are withdrawn); and where challenges are not determinative of the results (or, if determinative, are withdrawn).

b. The certification will be issued by the Board where objections are filed or challenges are determinative of results, *except* that the Regional Director will issue a certification (if one is called for by the results) after the opening and counting of challenged ballots pursuant to a direction of the Board, at the expiration of the 7-day period for filing objections to the revised tally only. (See Rules, Sec. 102.69(h).)

11472.3 *Election Directed by the Regional Director or Board:*

a. The certification will be issued by the Regional Director where no objections are filed (or, if filed, are withdrawn); and where challenges are not determinative of the results (or, if determinative, are withdrawn).

b. Objections filed or challenges determinative of results:

   (1) Certification may be issued by the Regional Director in a supplemental decision based on his/her administrative investigation or hearing, or both. It is within the Regional Director's discretion to issue the certification forthwith; it is not essential that issuance of the certification be delayed until after the expiration of the time for filing a request for review.

   (2) Certification may be issued by the Board after consideration of a Regional Director's report or after consideration of a hearing officer's/administrative law judge's report.

c. The Regional Director will issue a certification (if one is called for by the results) after the opening and counting of challenged ballots pursuant to a direction of the Regional Director or the Board, at the expiration of the 3-day objection period (if no objections have been filed to the revised tally).

11474 *Form:* The form of a certification will vary with the circumstances. A certification may be a separate document or appended to a report or supplemental decision on challenges and/or objections.

When the Board or a Regional Director does not rule on eligibility or unit placement and directs that the disputed classification be permitted to vote subject to challenge, and those challenges are not determinative of the results, appropriate language should be used to indicate that the challenged classifications are neither included in nor excluded from the bargaining unit inasmuch as no determination has been made regarding the disputed placements. Such information should be conveyed in a footnote on a certification, such as,

> Note, however, that (*unit category*) are neither included in nor excluded from the bargaining unit covered by a certification, inasmuch as the Board in denying the employer's request for review of

> the Regional Director's decision in this matter excepted the unit placement of (*unit category*) and ordered them voted subject to challenge.

In a self-determination election held among professional employees, appropriate language should be used. For example, whatever the majority answer may be to the first question ("Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?"), a footnote on the certification of representatives or certification of results (whichever applies) should convey this information.

11476 *Certification File:* Regions and Subregions should maintain a permanent file of certifications issued in their cases. The file should be arranged by case number and should contain all certifications of representatives issued by the Regional Director or by the Board, including certifications contained in Regional Director's supplemental decision or in the Board's decision after report on challenges or objections. Where the certification does not contain a unit description, a copy of the election agreement, stipulation, or decision and direction of election should be affixed to the certification.

A similar file should be maintained on unit clarifications and amendments of certifications.

11478 *Authority of Regional Director to Correct, Amend, or Revoke a Certification*

11478.1 *Correction of Certification:* A Regional Director has authority to correct inadvertent errors in a certification, whether issued by the Board or by the Regional Director. Matters of substance must be disposed of by amendment.

11478.2 *Amendment of Certification:* On appropriate petition, the Regional Director may amend any certification by a decision issued with or without a hearing.

Where the certification involved arose out of an agreement for consent election, the Regional Director's decision on amendment shall be final.

Where the certification involved was issued in a directed election or in a stipulation for certification upon consent election, the Regional Director's decision on amendment shall be final, provided that any party may file a request for review with the Board, as provided in Section 102.67 of the Rules and Regulations.

11478.3 *Revocation of Certification:* A Regional Director has authority to revoke a certification on a motion by one of the parties, or on his/her own initiative, if he/she feels that revocation is appropriate in a given situation.

Where the certification involved arose out of an agreement for consent election, the Regional Director's action on revocation shall be final.

Where the certification involved was issued in a directed election or in a stipulation for certification upon consent election, the Regional Director's action shall be final, subject to the right of the parties to request review by the Board.

11480 *Authority of Regional Director in Clarification of Bargaining Unit Cases:* On appropriate petition, the Regional Director may issue a decision either with or without a hearing.

Where the bargaining unit is certified, if the certification arose out of an agreement for consent election, the Regional Director's action on clarification shall be final.

Where certification was issued in a directed election or in a stipulation for certification upon consent election, or where the bargaining unit has not been certified by the Board, the Regional Director's action on clarification shall be final, subject to the right of the parties to request review by the Board.

11490-11498 *UC and AC Case Procedures*

11490 *Initial Communications:* Immediately on the docketing of a petition for clarification of bargaining unit or for amendment of certification, an acknowledgment of the filing is sent to the petitioner and notification of the filing, along with a copy of the petition, is sent to all interested parties. All parties are given the name of the Board agent to whom the case has been assigned. Registered mail is not required.

11490.1 *Interested Parties:* Interested parties consist of the employer involved; the recognized or certified bargaining agent; all labor organizations and individuals who claim or are believed to claim to represent any employee within the unit involved or who would be affected by the proposed clarification, as the case may be; any labor organization that, by letter within the past 6 months, has notified the Regional Office that it represents employees of the employer involved, or is presently actively campaigning among employees of the employer; any labor organization whose name appears as an interested party in any prior case involving the same employees that has been closed within recent years.

If the interest of a party is not apparent at the outset, that party is notified of the proceeding, in the form and manner indicated above, as soon as that party's interest becomes apparent.

For purposes of initial communication, it is preferable to err on the side of considering a party to be interested than on the side of ignoring the party.

Blanket requests for notice of "all" petitions filed should not be honored.

11490.2 *Information Requested:* The certified labor organization, if any, should be requested to submit a copy of the certification. All parties should be requested to submit copies of any presently existing or recently expired contracts covering any of the employees. They should also be requested to notify the agent at once of any other interested parties who should be apprised of the proceedings.

11492 *Preliminary Investigation:* On receipt of the case, the Board agent should go over the petition and any accompanying papers and should check any prior related cases. With respect to any issue that may be anticipated on the basis of such examination, the agent should familiarize himself/herself with the existing precedents. The agent should ensure that there are no fatal defects on the face of the petition.

As soon as possible after the filing of petition, but ordinarily not until sufficient time has passed for the parties to have received the initial letters thereon, the Board agent should make his/her first telephone calls.

The Board agent should make every effort to circumvent attempts to delay giving information sought in the initial telephone calls. He/she should accede to and should volunteer his/her services in connection with other arrangements designed to transmit the information with reasonable promptness. In the initial contacts, if agreement appears unlikely, the Board agent should prepare the parties for issuance of Regional Director's decision without hearing or for issuance of notice of hearing.

Explaining, if necessary, the need for expedition and giving assurance that the step is without prejudice to the parties furnishing the requested material, the Board agent should inform the parties that if hearing is to be held the notice will probably issue in the next day or two. The agent should fix an early date for hearing before contacting the parties and check with them as to acceptability of such date.

If, on the other hand, initial contacts indicate that the parties are in accord, the Board agent should condition the announcement of the imminent issuance of Regional Director's decision without hearing or notice of hearing on breakdown of negotiations.

11492.1 *Withdrawal Solicited:* If it appears on initial contacts that a question concerning representation exists, or if for any other reason it appears that the case would ultimately be dismissed, the petitioner should be made aware of this and a withdrawal request should be solicited.

11492.2 *Further Investigation:* In most cases, the regional determination as to the future course of the case can be made on the basis of the initial investigation.

Where required, continued investigation, when feasible, should be based, mainly, on further telephone contacts and correspondence. It is anticipated that the exhaustive use of investigative devices, including extended correspondence, field trips, and/or joint conferences of the parties, usually will not be required.

All information elicited in the investigation should be incorporated into the case file.

11492.3 *Lack of Cooperation:* In the event of lack of cooperation in investigating the petition, a factual dispute should be resolved against the noncooperative party. Thus, failure of petitioner to make facts available should result in prompt dismissal.

Failure of other parties to furnish information on a given point should lead to acceptance of credible information that is available on that point, unless it flies in the face of the "total picture."

The requirement of thoroughness of investigation may be relaxed to the extent that parties (other than petitioner) refuse to furnish pertinent information promptly.

11492.4 *Amendments to Petition:* The petitioner on his/her own initiative and irrespective of developments in the pending investigation may add to or delete from his/her original or last amended petition.

Assistance to the extent permitted in connection with original petition may be rendered in connection with the filing of such amendments.

A petition is amended by typing "Amended" (or "Second Amended," "Third Amended," etc.) before the word "Petition" on the regular petition form and by rewriting the contents of the petition to include the desired changes. An amendment merely referring to the existing petition and stating what is being added to or dropped from the petition should not be used.

Whenever amended petitions are filed, all interested parties should be notified of the effected change.

An amendment filed after the dismissal of a petition should be docketed as a *new* petition, no matter how titled, and assigned a new number.

11494 *Regional Determination:* At the earliest point possible, a regional determination must be made as to the future course of the case.

The responsibility for making such a decision rests with the Regional Director.

While Board agents engage in initial dealings and propose appropriate case disposition to the parties, the ultimate responsibility for the action taken is the Regional Director's, and he/she must approve any consent election agreement, issue any notice of hearing, approve any withdrawal request, or dismiss, as the case may be.

11494.1 *Regional Committee Meeting:* On recommendation of the supervisor, or on his/her own volition, the Regional Director may decide that a case (because of importance, novelty, or doubt) requires a regional committee meeting and/or legal analysis.

11494.2 *Determination of Action To Be Taken:* The regional action may take the form of requiring additional investigation, approving a withdrawal request, requesting advice of Washington, dismissing, issuing a decision without hearing, or issuing a notice of hearing.

11494.3 *Dismissal Absent Withdrawal:* Where, from the investigation, it clearly appears that a question of representation exists, or for any other reason further proceedings in the case are unwarranted, a withdrawal request should be solicited of the petitioner. A reasonably short period should be given for requesting withdrawal, in the absence of which, at the end of the period, the Regional Director should issue a decision dismissing the petition.

Send a copy of the decision to the petitioner by certified mail, return receipt requested, and prepare an affidavit of service. Send copies by ordinary mail to all parties, or representatives thereof, involved in the case.

In a case where certification of the unit involved arose out of an agreement for consent election, the Regional Director's decision is final. In all other cases his/her action in dismissing the petition is final subject to the right of the parties to request review by the Board under Section 102.67 of the Rules and Regulations.

11494.4 *Hearing:* If hearing is indicated, a notice of hearing to be held before a hearing officer, at a time and place fixed therein, should be issued. Copies of the notice, to which are attached copies of the petition or last amendment, should be served on all parties by certified mail. Registered mail may be used in those instances when there is an advantage to that form of mail service, but such use should be very infrequent and the exception.

All hearing and posthearing procedures, insofar as applicable, shall be in conformance with instructions governing representation case proceedings, except that where the certification of the unit involved arose out of an agreement for consent election, the Regional Director's decision shall be final with no right of the parties to request review.

11496 *Regional Director Decisions:* The Regional Director may issue a decision amending a certification or clarifying a bargaining unit, or issue a decision and order dismissing a petition, either after hearing or without hearing on the basis of an *ex parte* investigation or after issuing a show cause notice.

11496.1 *Pattern 77, Dismissal of a UC Case:*

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[OR, if no hearing conducted: Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Petitioner proposes to clarify the bargaining unit as follows:

3. Clarification of the bargaining unit is not warranted inasmuch as

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

Dated____________________ ____________________
At____________________ Regional Director, Region

11496.2 *Pattern 78, Dismissal of an AC Case:*

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[OR, if no hearing conducted: Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner proposed to amend the certification as follows:

3. Amendment of the certification is not warranted inasmuch as

ORDER

It is hereby ordered that the petition filed herein be, and it is, dismissed.

Dated__________________ ____________________
At____________________ Regional Director, Region

11496.3 *Pattern 79, Decision and Clarification of Bargaining Unit:*

DECISION AND CLARIFICATION OF BARGAINING UNIT

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[OR, if no hearing conducted: Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner proposes to clarify the bargaining unit as follows: [also in this section set forth the applicable facts, discussion, and law]

3. Accordingly, the [position of/job classification of] is [excluded from/included in] the bargaining unit.

Dated__________________ ____________________
At____________________ Regional Director, Region

11496.4 *Pattern 80, Decision and Amendment of Certification:*

DECISION AND AMENDMENT OF CERTIFICATION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[OR, if no hearing conducted: Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to undersigned Regional Director.

Upon the entire record in this proceeding, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner proposed to amend the certification as follows: [also in this section set forth the applicable facts, discussion, and law]

3. Accordingly, the Certification of Representative issued on [date] in Case [number] should be, and it hereby is, amended as follows: by substituting [name] as [Employer] [certified union].

Dated____________________ ________________________
At______________________ Regional Director, Region

11498 *Copies of Regional Director Decisions to Washington:* Where the certification of the unit involved arose out of an agreement for consent election, one copy of the decision should be forwarded to Management and Information Systems Branch.

In all other cases, 19 copies should be forwarded to Washington. One of the 19 should be clearly marked for the Executive Secretary. Attach thereto a pink slip noting the date the petition was filed, and, if a hearing was held, note the date notice of hearing issued and date hearing closed. Also attach a copy of the affividavit of service so that the names and addresses of all parties will be immediately available.

11500–11516 *UD Case Procedures*

11500 *Objective:* The objective of a UD—or 9(e)(1)—case is to determine whether or not a majority of the eligible employees within a voting unit covered by an agreement between their employer and a labor organization, which is the exclusive representative of such employees, desire to *rescind the authority* of such labor organization to require, under such agreement, union membership of employees as a condition of continued employment.

11502 *Initiation:* A UD cases is initiated by the filing of a petition alleging that the employees covered by a union-security clause desire to rescind the authority to maintain such a clause.

11504 *Initial Notices and Service:* Upon docketing of the petition, the employer and union involved should be notified in writing of the filing. The notice should give the name of the Board agent to whom the case has been assigned; define the unit named in the petition; invite the parties' cooperation; request, of the employer, commerce information and a current classified list of eligible voters; and request, of both parties, copies of the current or recently expired contract and any relevant correspondence.

11506 *Investigation:* The investigation of the identity and nature of the parties, the composition of the bargaining unit (in contract and in petition), the date of holding of last valid UD election, and other pertinent issues must be as painstaking as in C and R cases.

11506.1 *Prerequisites:* No UD petition will be investigated while a question concerning representation of the employees involved is pending. If a timely representation petition is filed, a concurrent UD petition should not be dismissed until the Regional Director or the Board actually finds that a representation question exists or until the parties so agree by signing a consent election agreement in the R case. Meanwhile, however, investigation should be suspended.

Effect of a concurrent C case is found at section 11730.

11506.2 *Jurisdiction:* With respect to exercising jurisdiction in UD cases, the principles to be applied are the same as those applied to other types of cases. Subject only to unamended errors on the face of the petition this constitutes the first issue to be disposed of in the investigation. Lacking jurisdiction, there can be a dismissal without further investigation.

11506.3 *Evidence in Support of Petition:* A statutory requirement for the processing of a UD petition is the presentation of a petition by at least 30 percent of the covered employees asking that the union-security authorization be rescinded.

The evidence supporting the petition need not be in the precise language of the Act; it is sufficient if the intent is clear.

The evidence should be submitted with the petition. If it is not, a 48-hour notice should be given by the Regional Director; if the proof is not submitted within that period the petition may be dismissed.

Where applicable, the procedures and principles outlined for R cases should be followed.

The file should contain a memo or Form NLRB-4069 showing the results of the interest investigation.

In seasonal industries, although no election may be held until a representative number of employees are employed, the UD petition will be accepted for filing before the season commences, and proof of authorization may be based on the total number of *permanent* employees working at the time the petition is filed or on some other reasonable formula that satisfies the spirit of the showing requirement.

11506.4 *Union-Security Clause:* The existence of a union-security clause is a prerequisite in a UD case. It is not necessary, however, that the clause be a *lawful* one; to hold otherwise would serve to defeat the intent of Congress.

11506.5 *Contract as Bar:* The existence of a contract with a union-security clause is a prerequisite to proceeding in a UD case. However, the Board has consistently held that the normal contract-bar principles are not applicable to UD petitions. Accordingly, the Regional Director should direct that an election be held if contract bar is the *sole* issue.

11506.6 *Bargaining Unit:* The unit covered by a UD petition should be the same as the contractually defined unit. On the other hand, if the former differs from the latter only in the descriptive terms used but not in substance, the petition should not be dismissed; and, even if there is substantial variation between the two, the case should be put before the Regional Director or the Board by hearing if it appears that the UD unit is an appropriate one and the contract unit is not.

11508 *Regional Determination*

11508.1 *Basis of Disposition:* The assigned Board agent should ascertain, as early as possible, the facts as to the various issues.

By way of a written report or at a regional committee meeting, the agent should recommend dispositive action.

If the precedents for formal proceedings are not met, the petition should be dismissed absent withdrawal, with adequate opportunity provided for appeal to the Board.

If the conditions are met, affirmative attempts should be made to secure a consent election, either by agreement or by stipulation.

Efforts to achieve a consent agreement having failed, the Regional Director should direct an election be held or issue a notice of hearing. The latter procedure should be reserved for situations in which substantial issues exist.

11508.2 *Direction of Election by Regional Director:* Should the Regional Director determine that, under the circumstances, an election is appropriate, he/she should serve on all parties a direction of election.

Directions of election issued by the Regional Director should carry an *Excelsior* footnote.

11508.3 *Pattern 38, Direction of Election*

Date ________

Petitioner
Employer
Union

Re: Case Name

Gentlemen:

On the basis of the investigation made to date in the above matter, it appears appropriate now to conduct a secret-ballot election to determine whether or not certain of the employees of [employer name] wish to withdraw the authority of [union name] to require, under its agreement with their employer, that membership in the union be a condition of employment.

Accordingly, pursuant to Section 9(e)(1) of the National Labor Relations Act, as amended, and Section 102.85 of the Board's Rules and Regulations, an election by secret ballot will be conducted as provided in the enclosed notice of election.[1]

Additional copies of the notice of election are herewith furnished the employer for posting in conspicuous places throughout the plant.

Your cooperation will be appreciated.

Very truly yours,
Regional Director

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[1] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region [ ] within 7 days of the date of this Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office [address], on or before [date]. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

(Copies of the notice of election should be enclosed, additional copies enclosed with the letter to the employer.)

11510 *Prehearing and Hearing Procedures:* Where a notice of hearing has issued, the prehearing and hearing procedures are the same as those for R cases (secs. 11140–11258).

11512 *Elections:* Whether agreed, Regional Director directed, or Board directed, election procedures are the same. Except to the extent indicated below, they are the same as those applicable to R case elections (secs. 11300–11456).

It should be remembered that, in UD elections, a majority of those eligible to vote must vote for rescission of authority before a certification rescinding such authority will be issued. It is important therefore that the eligibility list be checked and agreed to in advance by the parties. Persons who are ill, on vacation, or temporarily laid off, but not employees in the armed services who do not actually appear to vote in person, will be included as "eligible" employees.

The question on the ballot should be, "Do you wish to withdraw the authority of your bargaining representative to require under its agreement with the employer that membership in the union be a condition of employment?"

11514 *Postelection Procedures:* Postelection procedures in UD cases, including investigation and disposition of challenges and objections, follow the same general course as those applicable to directed elections in R cases.

11516 *Certification of Results:* At the conclusion of the case, a certification of results of union deauthorization election issues.

11516.1 *Pattern 48, Certification of Results of Election*

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Type of Election [Consent,
stipulation, Regional Director-
directed, Board-directed]

(name of party)

Employer

and Case

(name of party)

Petitioner

CERTIFICATION OF RESULTS OF ELECTION

Following the filing of a petition, pursuant to Section 9(e) of the National Labor Relations Act, as amended, an election was conducted herein under the supervision of the Regional Director for the National Labor Relations Board. No objections were filed to the conduct of the election, or to the tally of ballots.

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

It is hereby certified that a majority of employees eligible to vote have (not) voted to withdraw the authority of (name of union) to require, under its agreement with the Employer, that membership in such labor organization be a condition of employment, in conformity with Section 8(a)(3) of the Act, as amended.

Signed at ____________, this ________ day of ______ 19__.

____
Regional Director for Region ____
National Labor Relations Board

11520 *Last-Offer Elections:* Preparations for and conduct of elections held under Section 209(b) of the Labor Management Relations Act, 1947 (Title II—National Emergencies) should be undertaken pursuant to advice procured from the Division of Operations Management on a case-by-case basis.

11530 *Telegraph Merger Act Cases:* Cases filed under the Telegraph Merger Act (known as T Cases) should be handled pursuant to advice procured from the Division of Operations Management on a case-by-case basis.

11540 *Certification of Representatives Under FLSA:* Under Section 7(b) of the Fair Labor Standards Act (FLSA), a union (including labor organizations representing Federal, state, or local government employees) may seek certification as bona fide representative of a given group of employees. The procedure to be followed is set forth below.

a. Petition forms (Form NLRB-1026) should be filed in the appropriate Region by the labor organization seeking the certification; and the Region should give the case a ______________W.H. number.

b. At the time the petitions are filed for the bona fide certification, the Region should request a copy of the current or most recent contract between the labor organization and the employer.

c. The Region should ascertain whether there is a certification as exclusive bargaining agent outstanding.

d. The Region should issue a notice to show cause, which would be posted on the employer's premises and sent to all interested parties.

e. If there is no response to the notice, the Region should send the file forward to the Board with the Regional Director's recommendation.

f. If there is a response to the notice to show cause that raises issues sufficient to go to a hearing, a hearing is set for a hearing officer who, at the conclusion of such hearing, makes a written report without recommendation. The Regional Director reviews the report and makes a recommendation to the Board and the report and record are transmitted to the Board, which will decide whether or not to issue the certification. Procedures in such hearing will be similar to representation procedures with the burden on the objecting party.

Under the above-recommended procedures, a notice to show cause will be issued in each case. The Board will issue the certification. The Region will have the discretion of setting the petition down for hearing or determining whether an investigation is warranted before going to hearing.

A certificate of *bona fides* for purposes of the FLSA does not necessarily establish the right of the organization so certified to be recognized as the exclusive bargaining representative of the affected employees under the provisions of the NLRA.

11700–11886 *Items Common to all Cases*

11700–11714 *Jurisdiction*

11700 *Jurisdictional Standards:* The Board's jurisdictional standards existing on August 1, 1959, have been incorporated into the statute as defining the extent to which the Board might in its discretion decline to exercise its legal jurisdiction. Pursuant to Section 14(c)(1), these standards may be modified provided that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing on August 1, 1959.

11702 *Advisory Opinions:* Under certain circumstances the Board will make a preliminary determination as to whether it would assert jurisdiction over the parties to a particular controversy. (a) Whenever a party to a proceeding before any agency or court of any State or territory is in doubt whether the Board would assert jurisdiction on the basis of its current jurisdictional standards, the party may file a petition with the Board for an advisory opinion on whether it would assert jurisdiction on the basis of its current standards. (b) Whenever an agency or court of any State or territory is in doubt whether the Board would assert jurisdiction over the parties in a proceeding pending before such agency or court, the agency or court may file a petition with the Board for an advisory opinion on whether the Board would decline to assert jurisdiction over the parties before the agency or the court (1) on the basis of its current standards, or (2) because the employing enterprise is not within the jurisdiction of the National Labor Relations Act. A copy of the petition should be *served* on the Regional Director—the Region should not act as transmission agent of the original petition to the Board. (See Secs. 102.98–102.104 of the Board's Rules and Regulations and Secs. 101.39–101.41 of Statements of Procedure.)

11702.1 *Intervention in Advisory Opinion Proceedings:* Whenever a petition for an advisory opinion is served, if the Regional Director is in possession of jurisdictional facts, secured during the investigation of a prior or current C or R case and he/she believes such facts would assist the Board in rendering its advisory opinion, the Regional Director should move to intervene in the advisory opinion proceeding.

When appropriate the Regional Director should:

a. Move to intervene in the advisory opinion proceeding pursuant to Section 102.102 of the Rules and Regulations.

b. Submit to the Board with his/her motion the jurisdictional facts contained in the investigatory file, after having conducted any necessary additional investigation as to jurisdiction. If the case is closed, however, no further investigation should be conducted unless the Board so requests.

c. In accord with Section 102.113(b) of the Rules, serve copies of the motion to intervene and jurisdictional facts on the state court or agency and the parties to the state proceedings.

d. Advise the parties so served that pursuant to Section 102.101 of the Rules, they have 14 days after service thereof within which to make a response.

e. File eight copies of the motion to intervene, together with the jurisdictional information.

11704 *Declaratory Orders:* When both an unfair labor practice charge and a representation case relating to the same employer are contemporaneously on file in a Regional Office, and there is doubt as to whether the Board would assert jurisdiction over the employer involved, the General Counsel may file a petition with the Board for a declaratory order disposing of the jurisdictional issue in the cases.

If the Regional Director is of the opinion that a declaratory order should be sought, he should prepare a petition containing the allegations required by Section 102.106 of the Board's Rules and Regulations. The eight copies of the petition, plus sufficient additional copies for service on all parties, should be submitted to the Division of Operations Management with a transmittal memorandum setting forth the Region's recommendations. An affidavit of service, original and two copies, containing the names and addresses of all parties involved in the unfair labor practice and representation cases should also be prepared in the Region and submitted with the petition.

If the petition is deemed appropriate, the General Counsel will sign it, file it with the Executive Secretary of the Board, serve a copy of the petition on each of the parties involved, complete the affidavit of service, and notify the Region by means of a conformed copy of the affidavit of service.

(For proceedings following the filing of the petition see Secs. 102.108–102.110 of the Board's Rules and Regulations, and Sec. 101.43 of the Statements of Procedure.)

11706 *Investigation:* Among the earliest determinations to be made are whether the employer is an "employer" under the Act and whether, applying current Board standards, the alleged unfair labor practices or question concerning representation "affect commerce." Charges or petitions deficient in either of these respects should be dismissed absent withdrawal.

11708 *Obtaining Commerce Information from Employer:* Normally, commerce information is furnished by the employer involved. In a CA case, in an R case, or in a UD case an appropriate questionnaire is sent the employer with the initial letter; in all other cases, a similar questionnaire should be sent at an early date by the assigned Board agent. Questionnaires should be tailored to fit the circumstances of the case. It is important to note that the use of such questionnaires in some cases will be only the beginning point of the jurisdictional investigation; where further investigation is necessary, of course, it must be undertaken. This is particularly true in CA cases where the returned questionnaire indicates that the employer falls just a little short of the jurisdictional standards and in cases against labor organizations, or some R cases, where the Board's jurisdiction may be contested by the respondent or an intervenor, respectively.

11708.1 *Commerce Questionnaire*

FORM EXEMPT UNDER
44 U.S.C. 3512

FORM NLRB—5081
(9-80)

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

PLEASE READ CAREFULLY. Answer all applicable items and return to Regional Office.
If additional space is required, use plain bond paper and identify item number.

CASE NAME	CASE NUMBER

1. TYPE OF BUSINESS

☐ Corporation	☐ Partnership	☐ Sole Proprietorship

2. CLASSIFICATION WHICH DESCRIBES YOUR BUSINESS

☐ Wholesaling	☐ Newspaper	☐ Office or Industrial Building
☐ Retail	☐ Hospital	☐ Hotel - Motel
☐ Manufacturing/Processing	☐ Service Organization	☐ Trucking
☐ Public Utility	☐ Broadcasting Station	☐ Nursing Home
☐ Transit System	☐ Building and Construction	☐
☐ Other (Describe)		

3. EXACT LEGAL TITLE OF FIRM

4. IF A CORPORATION	A. INCORPORATED IN STATE OF:	B. NAME(s) AND ADDRESS(es) OF PARENT, SUBSIDIARY, OR RELATED CORPORATION, IF ANY AND DESCRIBE RELATIONSHIP.
5. IF A PARTNERSHIP	A. FULL NAME AND COMPLETE ADDRESS OF ALL PARTNERS.	
6. IF A PROPRIETORSHIP	A. FULL NAME AND COMPLETE ADDRESS OF PROPRIETOR.	

7. BRIEFLY DESCRIBE THE NATURE OF YOUR BUSINESS (General products handled or manufactured, or nature of services performed).

8. PRINCIPAL PLACE OR BUSINESS LOCATED AT:	A. BRANCH(es) LOCATED AT:

(Questionnaire continued)

9. NUMBER OF PERSONNEL PRESENTLY EMPLOYED BY YOUR FIRM	A. TOTAL	B. AT THE ADDRESS INVOLVED IN THIS PROCEEDING
10. DURING THE PAST ☐ CALENDAR ☐ FISCAL YEAR (If Fiscal Year indicate dates) OR ☐ LAST 12 MONTHS (Check appropriate box):		
A. DID GROSS REVENUE FROM SALES OR PERFORMANCE OF SERVICES DIRECTLY TO CUSTOMERS OUTSIDE THE STATE EXCEES $50,000 ☐ YES ☐ NO IF LESS THAN $50,000 INDICATE AMOUNT		$
B. DID GROSS AMOUNT OF PURCHASED OF MATERIALS OR SERVICES DIRECTLY FROM OUTSIDE THE STATE EXCEED $50,000 ☐ YES ☐ NO IF LESS THAN $50,000 INDICATE AMOUNT		$
C. DID GROSS REVENUE FROM YOUR SALES OR PERFORMANCE OF SERVICES EQUAL OR EXCEED $50,000 TO FIRMS WHICH DIRECTLY MADE SALES TO CUSTOMERS OUTSIDE THE STATE AND/OR TO CUSTOMERS WHICH MADE PURCHASES FROM DIRECTLY OUTSIDE THE STATE ☐ YES ☐ NO IF LESS THAN $50,000 INDICATE AMOUNT		$
D. IF THE ANSWER TO 10(c) IS NO, DID GROSS REVENUE FROM SALES OR PERFORMANCE OF SERVICES EQUAL OR EXCEED $50,000 TO PUBLIC UTILITIES, TRANSIT SYSTEMS, NEWSPAPERS, HEALTH CARE INSTITUTIONS, BROADCASTING STATIONS, COMMERCIAL BUILDINGS, EDUCATIONAL INSTITUTIONS AND/OR RETAIL CONCERNS ☐ YES ☐ NO IF LESS THAN $50,000 INDICATE AMOUNT		$
E. DID GROSS AMOUNT OF YOUR PURCHASES EQUAL OR EXCEED $50,000 FROM FIRMS WHICH IN TURN, PURCHASED THOSE GOODS DIRECTLY FROM OUTSIDE THE STATE ☐ YES ☐ NO		$
F. GROSS REVENUE FROM ALL SALES OR PERFORMANCE OF SERVICES (Check largest amount which firm equaled or exceeded): ☐ $100,000 ☐ $200,000 ☐ $250,000 ☐ $500,000 ☐ $1,000,000 IF LESS THAN $100,000 INDICATE AMOUNT		$
11. ARE YOU A MEMBER OF, OR PARTICIPATE IN, AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING? ☐ YES ☐ NO (If Yes, give Name and Address of association or group).		
12. DID FIRM PERFORM NATIONAL DEFENSE WORK DURING THE PERIOD INDICATED IN 10 ABOVE? ☐ YES ☐ NO (If Yes, amount of dollar volume and name(s) and address(es) for whom work was performed)		$
13. PROVIDE NAME AND TITLE OF YOUR REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION CONCERNING THE OPERATION OF YOUR BUSINESS		
NAME	TITLE	TELEPHONE NO.

SIGNATURE OF AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE		
NAME AND TITLE (Type or Print)	SIGNATURE	DATE

11708.2 *Sworn Affidavits; When Required:* Where an employer furnishes commerce information that falls just short of the jurisdictional standards used by the Board and where the employer contests the Board's jurisdiction on the ground that its business does not meet the Board's standards, sworn affidavits should be procured from the employer with respect to the information being furnished. The Regional Director may request an affidavit in any case, should he believe that the circumstances justify one.

In the obtaining of an affidavit pursuant to the foregoing policy, the employer should be advised that it is subject to the criminal penalties of the United States Code applicable to any one giving false information to the United States Government, and a statement to this effect, such as that now used on petitions and charges,

> WILLFULLY FALSE STATEMENTS HEREIN CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

could appropriately appear at the bottom of the affidavit.

If, on request made pursuant to the foregoing policy, the employer refuses to submit an affidavit, the case should be set down for hearing, all other factors being appropriate.

11708.3 *Subpoena Served on Employer (see also secs. 11770–11806):* All reasonable and practical avenues are to be explored before resort to investigative subpoena. Should an employer prove uncooperative in this respect, other sources (sec. 11710) should be utilized unless an undue expenditure of time will be involved. One need not, for example, circularize 30 or 40 customers of an employer as an alternative to issuance of a subpoena on the employer.

If the utilization of reasonable and practical means fails to develop sufficient evidence to dispose of the question of jurisdiction in C case, a subpoena—normally, duces tecum—should be served on the employer. It should be returnable *before* issuance of complaint unless it is otherwise clear (through some form of inadmissible evidence, such as widespread repute, etc.) that the Board does have jurisdiction. In the latter case, the subpoena should be returnable at the C case hearing.

If, in representation cases, utilization of reasonable and practical means fails to develop sufficient evidence to dispose of the question of jurisdiction, production of the relevant material should be demanded in writing (subpoena returnable at the hearing may be used for this purpose). The Board agent responsible for establishing jurisdictional facts should be prepared to establish facts concerning statutory jurisdiction and otherwise make a record appropriate for a jurisdictional determination under the *Tropicana Products*, 122 NLRB 121 (1958), standard, in the event of noncooperation or noncompliance with the subpoena. If, for any reason, the *Tropicana* standard is inapplicable, uncertain, or inadvisable, a subpoena duces tecum should be served, and, if necessary, enforced. In appropriate circumstances, a subpoena returnable before issuance of the notice of hearing may be used.

11710 *Other Sources for Obtaining Commerce Information:* Other sources may be utilized as a supplement to, a check on, or substitutes for information supplied directly by the employer. For example:

a. Prior cases

b. Employees, such as receiving/shipping department employees

c. Suppliers or customers of employer

d. Railroads, trucking lines

e. State and Federal agencies

f. Business listings, Moody, Standard and Poor, trade journals.

11710.1 *Contacts with Other Agencies:* Contacts with Washington offices of other agencies should be made through the Division of Operations Management. Out-of-Washington contacts may be made directly or with the assistance of other Regional Offices.

11712 *Action on Basis of Commerce Investigation:* Do not proceed (or dismiss) on a bare admission (or denial) that jurisdiction exists. All determinations in this respect must be based on *facts*.

11712.1 *Jurisdictional Standards Not Met:* Where it is clear that a given case does not meet the Board's jurisdictional standards, the case should be dismissed on the ground that it will not effectuate the policies of the Act to assert jurisdiction.

11712.2 *Jurisdiction Doubtful:* Wherever a case involves a doubtful question of jurisdiction, submit it for advice to the Division of Advice (see sec. 11751.1), whether or not any party objects to the assertion of jurisdiction.

11712.3 *Gross Volume Sole Test:* Where gross volume of business is the sole test for asserting jurisdiction, elicit commerce data on inflow, outflow, franchise, etc., sufficient to establish *de minimis* statutory jurisdiction.

11712.4 *Subpoena Not Complied with:* Where an investigative subpoena relating to commerce has not been complied with, it should be enforced (secs. 11770 and 11790) unless *Tropicana* is relied on or the need for the subpoenaed material is otherwise obviated (sec. 11708.3).

11714 *Proof in Formal Proceedings:* See sections 10390–10402 for C cases; sections 11216–11230, particularly 11228, for R cases. Also see section 11712.4. In absence of stipulation thereto, commerce facts should be proved on the record.

TRANSFER, CONSOLIDATION, AND SEVERANCE

11720–11720.4 *Transfer, Consolidation, and Severance*

11720 *Generally:* Rules and Regulations, Sections 102.33 and 102.72, deal with transfer, consolidation, and severance of charges and petitions, respectively. The bases for action in this respect involve necessity with respect to effectuation of purposes of the Act, costs, and time, e.g., cases may be transferred where economy is thus achieved; cases may be consolidated where (a) the issues and parties are substantially the same and (b) no one is prejudiced thereby.

11720.1 *Transfers:* Transfers are handled in the following manner: The Regions involved in the transfer will confer by mail, teletype, or telephone about the proposed action and the reasons therefor. The Region that is transferring the case will then request the Division of Operations Management by teletype (see Clerical Procedures, sec. 12420) for an order transferring the case. The request will contain the case name, petitioner or charging party, the present case number, and number to be assigned on transfer; a brief statement of the reasons for transfer; and an indication of whether the transferee Region concurs in the proposed action. A copy of the teletype will be sent to the transferee Region. On receipt of the General Counsel's order of transfer, the transferring Region will send the file to the transferee Region after notifying all parties to the case of the transfer and that future correspondence in the case should be directed to that office.

A transfer may be effected at the time of filing, if the necessity for transfer is apparent at that time; otherwise, the transfer should take place as soon as the necessity therefor becomes apparent.

11720.2 *Consolidation:* A consolidation normally does not take place while the cases involved are in the nonformal investigative stages. It normally occurs when notices of hearing are about to issue or when, one of the cases already having been noticed for hearing, the other(s) are about to be noticed.

A Regional Director on his/her own motion may, without clearance, consolidate cases pending in his Region in the following situations:

a. R cases involving the same employer or the same employer-association

b. CA cases where the respondent is the same in each case

c. CB cases where the respondent is the same and where the fact situations are related (e.g., an illegal contract or an association-wide strike)

d. A CA and a CB case where both cases arose from the same state of facts (e.g., a discharge, a strike situation, or bargaining negotiations claimed to have been in bad faith on both sides)

e. An R case in which the Board or the Regional Director has directed a hearing on objections with a C case, where the two cases involve issues in common.

In all other situations where consolidation is desired, an oral or written request for authority, including a brief statement of facts, should be submitted to the Division of Operations Management.

The order of consolidation is issued by the Regional Director where the cases consolidated are all pending in his/her Region and may be combined with a notice of hearing.

11720.3 *Severance:* Prior to hearing the Regional Director, on his/her own motion, may sever cases that he/she had previously consolidated on his/her own authority. In other situations clearance should be obtained from the Division of Operations Management.

11720.4 *Motions:* Motions by the parties to consolidate or sever should be filed with the chief administrative law judge if prior to hearing or with the administrative law judge if during hearing.

CONCURRENT R AND C CASES

11730–11730.11 *Concurrent R and C Cases*

11730 *Concurrent R and C Cases:* The Agency has a general policy of holding in abeyance any representation case (RM, RC, or RD) or union deauthorization case (UD) where pending unfair labor practice charges filed by a party to the R or UD cases are based upon conduct of a nature which would have a tendency to interfere with the free choice of the employees in an election, were one to be conducted on the petition (e.g., *United States Coal & Coke Co.*, 3 NLRB 398, 399 (1937); *Carson Pirie Scott & Co.*, 69 NLRB 935, 938–939 (1946); *Columbia Pictures Corp.*, 81 NLRB 1313, 1314 (1949); see also *Holt Bros.*, 146 NLRB 383, 384 (1964)).

Where the pending charges allege violations of Section 8(a)(2), 8(a)(5), 8(b)(3), or 8(b)(7), such a policy also applies even where the person filing the charges is not a party to the R or UD case, and the petition may ultimately be dismissed, since the nature of the alleged violations of those sections of the Act and the remedies that could be provided therefor, might condition or preclude the existence of the question concerning representation sought to be raised by the petition (e.g., *Big Three Industries*, 201 NLRB 197 (1973)).

Exceptions to the application of these general policies include:

a. Situations where the person filing the ULP charge has requested the agency to proceed with the election (see sec. 11730.4)

b. Situations where, in the absence of a request to proceed, the Regional Director is of the opinion that the employees could, under the circumstances, exercise their free choice in an election and that the R case should proceed (see sec. 11730.5)

c. Situations where the alleged unfair labor practices are so related, at least in part, to the unresolved question concerning representation sought to be raised by the petition that the processing of the R case will resolve significant common issues (see sec. 11730.6)

d. Situations where charges are filed too late to permit investigation or clearance before a scheduled election (see sec. 11730.7).

A ULP charge is "pending" at all stages up to and including a withdrawal or dismissal, on the one hand; or, on the other, up to and including a court judgment with which there has not been full compliance.

(See sec. 10247 for special procedures where there are concurrent 8(b)(7) and (4) cases.)

[Insofar as applicable, reference in this section to R cases shall include AC, UC, and UD cases.]

11730.1 *Priority of Investigation:* If the charge is already pending at the time of the filing of the petition the investigation of the petition will normally be postponed; if the charge is filed after investigation of the R case has already begun, action on the petition will normally be suspended pending investigation of the charge, except where dismissal of the petition is warranted or the petitioner had requested its withdrawal.

As noted, processing of the R case will normally be suspended pending completion of the C case investigation. The Regional Director has discretion, however, to proceed with the R case in situations where the hearing has been scheduled and time does not permit determination of possible merit of the charge. Such discretion permits processing the R case up to but not including a decision, except on clearance with the Board. In addition, circumstances may warrant scheduling a hearing at a date when it is anticipated investigation of the C case will have progressed to the point where a determination may be made as to possible merit.

The investigation of ULP charges that are delaying disposition of an R case shall be accorded priority as established by section 11740.2(c).

11730.2 *Where C Case is Found Not to Have Merit:* If, on completion of investigation of the ULP charges, it is determined that the charges lack merit and are to be dismissed, absent withdrawal, the Regional Director should proceed with the processing of the R case. Even though the dismissal of the ULP charges is appealed, the Regional Director should proceed as if there were no concurrent charge, unless, in his/her discretion, he/she believes that further processing of the R case should await the results of the appeal.

However, where the situation involves an 8(a)(2), 8(a)(5), 8(b)(3), or 8(b)(7) charge (or an 8(a)(1) charge alleging employer assistance in filing a concurrent RD petition), which was dismissed and is either pending or on appeal, clearance should be obtained from the Board through the Office of the Executive Secretary before proceeding to an election.

When an appeal is filed the Office of Appeals should be promptly notified of the pending concurrent R case by special teletype.

11730.3 *Where C Case is Found to Have Merit:* If, on completion of investigation of the ULP charges, it is determined that the charges have merit and that a complaint should issue, absent settlement, the Regional Director should determine whether the further processing of the R case should be blocked by the C case. For the purposes of that determination, the Regional Director shall accept the ULP allegations, which are or would be set forth in the complaint, as true. If the Regional Director determines that the R case should be blocked by the C case because of the impact of the unfair labor practices on an election, were one to be conducted, he/she should hold the R case in abeyance until disposition of the C case, whereupon the processing of the R case may be resumed. Where the meritorious ULP allegations involve violations of Section 8(a)(5) or 8(b)(3), or a violation of Section 8(a)(2) where the alleged 8(a)(2) union is the petitioner in the R case, and the nature of the alleged violations, if proven, would condition or preclude the existence of a question concerning representation, the R case should promptly be dismissed, subject to reinstatement by the petitioner on final disposition of the C case. (Exceptions to the foregoing are set forth in secs. 11730.4–11730.7) The provisions of section 11730.11 should be followed by the Regional Director in informing the parties of his/her decision to hold in abeyance or to dismiss. Such action by the Regional Director is subject to appeal to the Board by any party under the provisions of Section 102.71 of the Board's Rules.

11730.4 *Exception 1—Request to Proceed Notwithstanding Pending Charges:*

a. An R case may be processed notwithstanding the pendency of ULP charges in a related C case (subject to the limitations set forth below), if the party filing the charge requests that the R case proceed. The request to proceed must be in writing. Form NLRB-4551 may be used for this purpose.

On receipt of a request to proceed, the Region may proceed with appropriate regional action on the R case (i.e., conduct the informal investigation; issue notice of, or conduct, a hearing; proceed with an election; or notify Executive Secretary if the matter is before the Board (sec. 11730.9)).

b. Where the nature of the alleged violations of Section 8(a)(2), 8(a)(5), or 8(b)(3) if proven would condition or preclude the existence of a question concerning representation, a request to proceed should not be honored where the blocking charge alleges such violations, except on specific authorization (see sec. 11730.10). Where such charges are involved they will, absent such specific authorization, be disposed of before concurrent R cases are processed.

c. Regional Directors are authorized after clearance with the Board through the Office of the Executive Secretary to honor a waiver whereby the petitioner affirmatively indicates a willingness to withdraw an 8(a)(2) assistance charge in the event the allegedly assisted union is certified. (*Carlson Furniture Industries*, 157 NLRB 851 (1966).) This authorization is limited to cases in which the Board has entered an order requiring the respondent employer to withdraw and withhold recognition from the assisted union unless and until it has been certified. Other concurrent R and C situations involving 8(a)(2) conduct are to be submitted according to sections 11730.7 and 11730.9.

d. In this respect, a party who requests withdrawal of a refusal-to-bargain charge, or of a domination of or assistance to union charge, to unblock an R case (in other words, who attempts to accomplish by withdrawal what he/she cannot accomplish by request to proceed) should be advised that, except in circumstances where the *Bernel Foam* principle (*Bernel Foam Products Co.*, 146 NLRB 1277 (1964)) is applicable, reinstatement of the charge might not be permitted after an election. *Fernandes Supermarkets*, 203 NLRB 568 (1973).

11730.5 *Exception 2—Where Fair Election Can Be Conducted Notwithstanding Meritorious Charges:* Notwithstanding the existence of a concurrent C case and the absence of a request to proceed (sec. 11730.4(a)) or a waiver (sec. 11730.4(c)), the Regional Director may be of the opinion that the employees could, under the circumstances, exercise their free choice in an election and that the R case should proceed. In such cases, the Regional Director should seek advice from the Board through the Office of the Executive Secretary (copy to the Division of Operations Management), giving supporting reasons. Among the factors to be considered are the character and scope of the charge and its tendency to impair the employees' free choice; the size of the working force and the number of employees involved in the events on which the charge is based; the entitlement and interest of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; the showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. The Board through the Office of the Executive Secretary will render appropriate advice.

11730.6 *Exception 3—Where Significant Common Issues Will Be Resolved by Processing the R Case:* Notwithstanding the absence of a request to proceed (sec. 11730.4(a)) or a waiver (sec. 11730.4(c)), the Regional Director may be of the view that the R case should proceed where (a) the unfair labor practices are so related, at least in part, to the unresolved issues sought to be raised by the petition that the processing of the R case will resolve significant common issues (e.g., *Panda Terminals*, 161 NLRB 1215, 1223–1224 (1966); *Krist Gradis*, 121 NLRB 601, 615–616 (1958)), and (b) the conditions of exemption 2 (sec. 11730.5) are met. In that event, the Regional Director should seek advice from the Board through the Office of the Executive Secretary (copy to the Division of Operations Management), giving supporting reasons.

11730.7 *Exception 4—Charge Filed Too Late to Permit Investigation:* Where charges are filed too late to permit adequate investigation or clearance before a scheduled election, the Regional Director may, in his/her discretion:

a. Postpone the election pending disposition of the charges or clearance for proceeding

b. Hold the election as scheduled and impound the ballots until after disposition of the charges

c. Conduct the election, issue tally of ballots, and, in the absence of the filing of objections, issue certification; and then proceed to investigate the charges.

11730.8 *Resumption of Processing of R Case on Disposition of ULP Charge:* Processing of an R case held in abeyance during the pendency of a ULP charge may be resumed on the disposition of the blocking charge. Where the charged party or respondent in the ULP proceeding has taken all action required by a settlement agreement, administrative law judge's decision, Board order, or court judgment, except that the full period for posting any required notice has not passed, certain action with respect to the R case may be taken, whether or not the charging party requests that the R case proceed.

a. A hearing may be held

b. A consent-election agreement may be taken

c. A decision and direction of election (or order dismissing petition) may be issued.

However, except in exceptional circumstances, no *election* should be held until the posting period has expired. In the event the charging party wishes to proceed to an election during the posting period, a written waiver must be obtained from the charging party agreeing that the unremedied unfair labor practices referred to in the posted notice may not constitute grounds on which the Board may set aside the election.

As an exception to the foregoing instructions, when the remedy requires that recognition of an unlawfully assisted union be withdrawn and withheld unless and until that union has been certified by the Board, neither an RC petition filed by that union, nor an RM petition, should be entertained until after the expiration of the posting period, and the showing of interest submitted in support of a petition filed by that union must be dated after expiration of the posting period.

11730.9 *Notification to Board:* If a blocking charge is filed at a time when the R case is with the Board in Washington, the Board should be notified of the filing. Form NLRB-511, the blank spaces of which are self-explanatory, should be sent directly to the Executive

Secretary's Office. All subsequent relevant developments or dispositions of the C case should be reported to the Executive Secretary's Office. On receipt of an executed request to proceed in the R case the Executive Secretary's Office should be notified.

11730.10 *Withdrawal of Request to Proceed:* Should a party attempt to withdraw a request to proceed, and once again suspend action on the R case, the reasons for the change of attitude should be ascertained. The Regional Director should rule on the request for withdrawal or, if the Regional Director wishes, may seek advice from the Executive Secretary's Office.

In 8(a)(2), 8(a)(5), or 8(b)(3) situations, where the nature of the allegations alleged, if proven, would condition or preclude the existence of a question concerning representation, requests to proceed will not normally be honored except on specific authorization by the Board through the Office of the Executive Secretary.

11730.11 *Informing Parties of Regional Director's Action:* Where, after deciding a complaint on concurrent ULP charges should issue, the Regional Director concludes that the concurrent R petition should be held in abeyance pursuant to the provisions of section 11730.3, the Regional Director should informally notify the parties of that decision and give them the reasons for not proceeding on the representation petition at that time.

If any party wants the reasons in writing, the Regional Director will set them forth in a letter informing the parties of the basis for the decision to hold the representation case in abeyance pending disposition of the unfair labor practice charges. The letter should also inform the parties of their right to appeal this action to the Board under Rule 102.71.

Where the Regional Director dismisses the petition because of pending meritorious 8(a)(2), 8(a)(5), or 8(b)(3) charges, the dismissal letter should set forth the reasons for the action, including the reasons why the unfair labor practice findings of the Regional Director would affect further processing of the petition, and inform the parties of the right to obtain review (under Sec. 102.71 of the Rules) by filing a request with the Board in Washington. The letter should also advise the petitioner that the R case dismissed is subject to reinstatement, if appropriate, on the petitioner's application after disposition of the ULP proceeding. To assure notification to the petitioner of the disposition of the ULP proceeding, the petitioner should be considered a party in interest in the ULP proceeding with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding.

11740–11740.2 *Priority of Cases*

11740 *Priority of Cases:* All cases are handled promptly but preference is given to those cases that have priority under the statute.

11740.1 *Statutory Priority Cases:* (See Sec. 10(l) and (m) of the Act.) The following types of cases have statutory priority:

a. 8(b)(4)(A), (B), and (C) cases

b. 8(b)(4)(D) cases involving 10(l) injunctive relief

c. 8(b)(7) cases, including petitions under Section 8(b)(7)(C) and Section 9(c), and charges affecting the disposition of 8(b)(7) cases or petitions thereunder

d. 8(e) cases

e. 8(a)(3)

f. 8(b)(2)

In determining which of several statutory priority cases should be given priority within the particular class or category, consideration shall be given to the particular facts of each case, including the date of filing, the nature of the alleged violation, its impact on the parties or the public, the type of relief indicated, and any other factors that would effectuate the policies of the Act in relation to priority in casehandling.

In this connection, where the need for injunctive relief is indicated in a particular statutory priority case, the preliminary investigation of such case, including the further processing to injunctive relief, shall normally take precedence over other matters in the office since time is of the essence where such relief is indicated. While all statutory priority cases must be handled expeditiously, any determination as to the manner of implementing this objective must in part be predicated on recognition of the time-factor problems relating to each. For instance, in an "expedited" election situation under Section 8(b)(7)(C), an interval of several days would normally be involved between the time of the direction of the election and the holding of the same during which the priority nature of the case would be of little practical significance; similar considerations are involved when evidence in an 8(a)(3) or 8(b)(2) case is unavailable for a short period of time, etc.

11740.2 *Order of Priority Based on Agency Policy:* Those cases not referred to in section 11740.1 as having statutory priority should be handled in accordance with the following order of priority which is based on agency policy considerations:

a. Any other C case involving 10(j) injunctive relief (the priority status of cases involving 10(j) injunctive relief is determined when the need for such injunctive relief is first indicated)

b. Other 8(b)(4)(D) cases

c. Other charges that are delaying the disposition of an R case (e.g., "blocking" C case)

d. Cases in which a work stoppage or lockout is in effect or is imminent and there is a direct relationship between the stoppage or lockout and the charge or petition

e. R cases involving a schism issue

f. Other R or UD cases

g. Other C cases

No action should be suspended in *any* case except for action on a case of higher priority. Thus, the possibility of settlement should not be allowed to impede the orderly processing of a case

Where in an 8(b)(4)(D) case 10(l) injunctive relief is indicated, it is treated as a statutory priority case. Where such injunctive relief is not indicated, the priority of an 8(b)(4)(D) case is no longer considered statutory in nature; such cases are accordingly given priority in the manner described above within the Agency policy category.

Where petitions under Sections 8(b)(7) and 9(c) of the Act are "blocked" by a C case, the latter should be investigated promptly and given priority over all other cases except as listed in section 11740.1, since the disposition of the "blocking" charge affects the further processing of the petition and the statutory priority 8(b)(7) case. Similarly, an 8(a)(2) charge filed in the context of an 8(b)(7) case would require a prior determination since no 10(l) restraining order in the 8(b)(7) case could be sought if it is determined that the 8(a)(2) case has merit. (See Sec. 10(l) of the Act.)

11750–11756 *Submission for Advice, Clearance, or Authorization*

It is not intended that sections 11750–11756 take the place of instructions in other sections of the manual concerning advice, clearance, or authorization, all of which should be followed even though not specifically set forth.

11750 *In General:* The decision as to whether a case falls in category of cases covered by this section must be made by, and is the responsibility of, the Regional Director. Although disagreement on the merits between the Regional Director and regional attorney does not automatically render a case one to be submitted, the existence of such disagreement is an important factor to be considered. Where the Regional Director and the regional attorney are in agreement that the case need not be submitted, dissent of other regional personnel need not be considered.

All questions in a case should be submitted simultaneously and should be clearly posed. Normally, the entire file should be sent in. It is not required that the parties be notified that the case is to be submitted to the Division of Advice. However, the file should indicate the positions of the parties with respect to the advice issues. Where the parties have not had the opportunity to submit their positions, they should be notified and invited to submit their positions promptly. As the statements of positions must be promptly submitted, the Region will not be significantly delayed in the preparation of its advice submission.

Credibility issues should not be submitted for resolution. If differences of opinion on credibility exist in the Region, they should be noted in the file; but the Regional Director must make the regional determination (sec. 10060).

All cases remanded to the Regions by the Division of Advice are to receive priority treatment and such further investigation as may be required shall be conducted immediately. The Region should return all remanded cases to Washington within 7 days after receipt, unless the nature or extent of the further investigation required or the unavailability of essential witnesses prevents prompt resubmission. Where the information requested can be transmitted conveniently by telephone or teletype, this means of communication should be utilized. In the event the further investigation cannot be completed and the case will not be resubmitted within a 7-day period, the Division of Advice should be notified of the reason for the delay and given an estimate of the additional time required.

11750.1 *Special and Miscellaneous Litigation; Collateral Suits in Federal or State Courts:* Whenever the Board or its agent may be sued or whenever a request is made that the Board intervene in private litigation, telephone the information to the Assistant General Counsel, Special Litigation. (See also secs. 10024.2, 11005, 11300.1.) Pleadings and papers, as received, should be forwarded by the quickest means to:

Office of the General Counsel

Attention: Assistant General Counsel, Special Litigation, Appellate Court Branch, Division of Enforcement Litigation

(Regions should also apprise their Assistant General Counsels in Division of Operations Management of these actions.)

In suits where injunctive relief is sought, call the Assistant General Counsel, Special Litigation, as soon as possible, and send all relevant papers via special delivery.

11751 *C Cases*

11751.1 *Generally:* Regional Directors are authorized to approve *unsolicited* withdrawals in all cases that would otherwise be submitted for advice, except where complaint has already been authorized by the Division of Advice. As to the approval of settlement agreements in advice-type cases, see section 11751.2. In all other proposed dispositions (i.e., complaint, dismissal, solicited withdrawals, or unsolicited withdrawals after complaint has been authorized by Advice), the Regional Director should submit to the Division of Advice any case falling within the classifications set forth in the current General Counsel memorandum dealing with this matter. The specific categories of cases to be submitted to Division of Advice are not set forth in this manual as they are revised on May 1 and November 1 of each year by issuance of a General Counsel memorandum. See for example G.C. Memo 86–11. General Counsel memoranda are available to the public.

The classification system used in the General Counsel's memoranda is as follows: The letters "MS" mean mandatory submission for all cases arising in the area. The letters "DS" refer to subject matter areas that *may very well* involve novel, complex, or doubtful issues, or policy issues. In these "DS" areas, the Regional Director should fully consider whether the case involves such issues, and the Region should be especially careful in its research. If there is a relevant guideline memorandum, it should be reviewed, together with postmemorandum decisions. However, the final decision as to whether to submit a case in one of the "DS" areas is that of the Regional Director. Finally, the letter "X" indicates subject matter areas that would not be specifically listed any longer. It is, of course, understood that cases in areas that are not listed may nonetheless involve novel, complex, or doubtful issues, or policy issues. If the Regional Director finds this to be the case, the matter should be submitted to Advice. As to matters that are interregional or national in scope or importance, the Regions should consult with Division of Operations Management to insure uniform handling and Washington awareness of the cases. If Division of Operations Management believes that the issues require Advice consideration, it can direct that the case(s) be sent to Advice.

> Section 10(j) requests should be submitted to Division of Advice except where the regional director would dismiss the charge on the merits, or where clearance is obtained from the Division of Operations Management to deny the 10(j) request (see sec. 10310.1).

NOTE: In all cases pending on advice, and in order to avoid unnecessary work by the Division of Advice, any subsequent developments (such as withdrawals, settlements, private adjustments) should be reported to the division promptly. This is especially important in cases involving injunctive relief.

11751.2 *Settlement Agreement:* The Regional Director should submit to the Division of Operations Management any settlement agreement, before approval, which he/she finds to involve the following:

a. Remedial aspect of a settlement is based on new or novel concepts.

b. Cases where the notice posting is waived or is for less than 60 days (sec. 10132.1).

11751.3 *Special Matters to Be Submitted to the Division of Operations Management Prior to Issuance of Complaint:*

a. Cases where investigation of charge indicates that the conduct complained of may also constitute noncompliance with a pending administrative law judge's decision, Board order, or court judgment in a prior case.

b. Before naming an attorney as a party respondent and/or agent of the respondent in the commission of unfair labor practices.

c. In cases in which the alleged unfair labor practices also violate the Occupational Safety and Health Act administered by the U.S. Department of Labor, the Region should refer to G.C. Memos 75–29 and 79–4 for instructions regarding submission of items to Division of Operations Management.

d. In cases in which the alleged unfair labor practices also are violative of the Federal Mine Safety and Health Act of 1977 administered by the U.S. Department of Labor, the Region should refer to G.C. Memo 80–10 for instructions regarding items to be submitted to Division of Operations Management.

11751.4 *Prehearing and Hearing:* Clearance from the Division of Operations Management should be obtained before:

a. Issuing investigative subpoenas in certain situations (secs. 10252 and 11770)

b. Issuing trial or hearing subpoenas if there are new or doubtful legal problems of enforceability (secs. 11772 and 11790)

c. Consolidation of cases in situations other than those set forth at section 11720.2

d. Severance of consolidated cases except as permitted by section 11720.3

e. Seeking enforcement of subpoena where between decision to issue and necessity of enforcement, intervening circumstances create enforcement problems (sec. 11790)

f. Denying request of private party for enforcement of subpoena (sec. 11790.1)

g. Introducing in evidence matters of a confidential nature (sec. 10398)

h. Travel by a trial attorney to appear at the taking of a deposition outside his own Region, where this appears necessary (sec. 10352.5).

11751.5 *Posthearing:* Washington clearance should be sought in the following matters from the Washington division or branch indicated in each subsection:

a. If the administrative law judge's decision embodies novel or complex policy questions (sec. 10430.1) (Division of Operations Management)

b. Normally responsibility for determining whether exceptions to an administrative law judge's decision should be filed rests with the Region. Exception: where complaint was authorized by any division or branch in Washington the Region should make a recommendation to that branch or division as to filing of exceptions. (This should be done promptly so that a decision can be made within the time for exceptions to be filed.) Where the theory of a desired exception is other than that on which the case was originally tried or where a new and novel issue is involved, clearance should be obtained from the Division of Operations Management (sec. 10438.3).

c. Before requesting oral argument before the Board (sec. 10438.5) (Division of Operations Management)

d. Before filing a motion for reconsideration of a Board order (sec. 10452) (Division of Operations Management)

e. Before filing an opposition to other party's motion for reconsideration where new or novel legal problems are involved (sec. 10452) (Division of Operations Management).

11751.6 *Compliance:* Compliance with settlement agreement, administrative law judge's decision, Board order, or court judgment should be cleared with the Division of Operations Management in the following situations:

- a. If proposed compliance does not include posting of notice to employees (secs. 10132.1 and 11751.4)
- b. In new or novel situations (sec. 10520)
- c. Before accepting cash settlements in lieu of reinstatement (sec. 10528.5)
- d. Before permitting cross-examination of discriminatees concerning their interim earnings and search for work as a prerequisite to settlement (sec. 10634)
- e. Before issuing complaint on new charge where noncompliance in prior case may be involved
- f. In cases posing unusual or close issues relating to the posting of side notices by respondents.

11751.7 *Backpay:* Clearance should be sought from the Division of Operations Management:

- a. Before institution of formal proceedings absent a court judgment or stipulation waiving enforcement (sec. 10652.1)
- b. Before acceptance of compliance with an administrative law judge's decision, Board order, or court judgment, on other than an equal proportionate basis (secs. 10636.1 and 11751.2)
- c. Before accepting an offer of lump sum settlement that is less than amount found due and does not comply with standards set forth in section 10628.1 (see also sec. 10629)
- d. Before agreeing to cash settlement in lieu of reinstatement (sec. 10528.5)
- e. Before backpay is obtained from the respondent or disbursed if standards are not complied with (except in informal settlements prior to hearing) (secs. 10570–10571)

f. Before including backpay matters in ULP hearing (sec. 10650)

g. Before issuing notice of hearing without backpay specification (sec. 10654.2)

h. Before testimony of compliance officer regarding backpay computation (sec. 10716.1)

i. Before extended delay in service of backpay specification (after court judgment) (sec. 10574.1)

j. Before withdrawal of specification where settlement reached does not meet all of the criteria set forth in section 10571 (sec. 10674.1).

11752 *10(k) Situations:* For the handling of 10(k) situations generally see sections 10208–10214 and G.C. Memo 73-82, and any modifications thereto that may subsequently issue. Note particularly clearance from the Division of Operations Management should be obtained in the following:

a. Before scheduling hearing for less than 11 days after service of notice of hearing (sec. 10210.2b, c)

b. Before designating a case as involving national defense if other than a missile or space site case (sec. 10210.3).

11754 *R Cases*

11754.1 *General:* All requests for advice in representation cases except as set forth in section 11754.2 should be directed to the Board through the Office of the Executive Secretary. The request for advice may be submitted either in writing, or where expedition is essential, by telephone or telegram.

Normally, requests for advice with respect to substantive law will not be submitted to the Board as the Regional Director is expected, in his/her decisionmaking capacity, to apply Board precedent and to decide most questions of statutory interpretation in light thereof. In unusual cases presenting novel issues, of course, the Regional Director may, in the exercise of his/her discretion, transfer such matters to the Board for decision. Advice, clearance, or authorization should be sought from or notification given to the Board or the Office of the Executive Secretary in the following circumstances:

a. Prior to any relaxation of the rule requiring a 30-percent showing of interest by petitioner (sec. 11022.3)

b. If suspected fraudulent authorization cards are submitted (sec. 11028.2b and 11028.4)

c. Where no-raiding procedures are involved (secs. 11052.1a, c, f and 11056)

d. If a case is in Washington on a request for review of the Regional Director's administrative dismissal and he wishes to revoke such dismissal (sec. 11100.3)

e. Where the union does not have a petitioner's showing of interest and the employer wishes to withdraw its RM petition over union opposition (sec. 11114.2)

f. Where a petitioner wishes to withdraw a petition after a valid election (sec. 11116)

g. Where the validity of the showing of interest has been raised in a request for review (sec. 11274)

h. Before treating exceptions or a request for review as a motion for reconsideration (secs. 11274 and 11406)

i. Where the date of an election has been set and a request for review is filed with the Board (secs. 11274, 11302.1, and 11314)

j. Where the date of an election has been set and a motion for reconsideration has been or is to be filed with the Board (sec. 11282)

k. Where an extension of the 30-day period to conduct a Board-directed election is necessary (sec. 11284)

l. Where the employer refuses to furnish an *Excelsior* list in an RM case (sec. 11312.6c)

m. Before updating the eligibility list used in a runoff (sec. 11250.5)

n. Where *Lufkin* rule language is included in election notice and problems or difficulties are encountered (sec. 11452.1)

o. Before proceeding to an election when dismissal of 8(a)(2), 8(a)(5), 8(b)(3), or 8(b)(7) charge (or an 8(a)(1) charge alleging employer assistance in filing a concurrent RD petition) is pending on appeal (sec. 11730.2)

p. Where a *Carlson Furniture* waiver is involved (sec. 11730.4c)

q. Where the Regional Director believes a fair election is possible notwithstanding a meritorious unfair labor practice charge (sec. 11730.5)

r. Where significant issues common to C and R cases might be resolved by processing the R case (sec. 11730.6)

s. Before honoring a request to proceed in the face of concurrent 8(a)(2), 8(a)(5), or 8(b)(3) charges (sec. 11730.10)

11754.2 *Advice, Clearance, or Authorization from the Division of Operations Management Should Be Sought Before:*

a. It is not required to submit for clearance before referring to other Federal or state agencies possible violations of other statutes, except the requirement of clearance would continue when the potential violation concerns possible criminal conduct related to Board proceedings, e.g., fraudulent authorization cards, perjury, or obstruction of justice in connection with NLRB proceedings. Similarly, the clearance requirement would continue prior to referral if alleged unethical conduct of attorneys is involved. (See sec. 10054.3.)

b. Issuing investigative subpoenas in certain situations (secs. 10252 and 11770)

c. Issuing hearing subpoenas if there are new or doubtful legal problems of enforceability (sec. 11772)

d. Consolidation of cases in situations other than those set forth at section 11720.2

e. Severance of consolidated cases except as permitted in section 11720.3

f. Payment of special fee for expert testimony (sec. 11780)

g. Seeking enforcement of subpoena where, between decision to issue and necessity of enforcement, intervening circumstances create enforcement problems

h. Denying request of private party for enforcement of subpoena (sec. 11790.1)

i. Taking actions pursuant to Section 102.66(d)(2) of the Rules concerning misconduct by parties during R case hearing (sec. 11182.1)

j. Filing a motion for reconsideration of a Board decision or an answer to such a motion filed by any other party that raises new or novel legal problems (secs. 10452 and 11751.5(e))

k. Preparing and conducting last-offer elections (sec. 11520)

l. Accepting offer of parties to share expenses of an election (sec. 11302.2)

m. Notifying voters of an election by newspapers, radio, or television (sec. 11314.3)

n. Obtaining non-Board personnel to participate in the conduct of an election

o. Requesting an administrative law judge to handle a complex hearing on objections/challenges (sec. 11424.1)

p. Filing a brief by counsel for the Regional Office in a hearing on objections/challenges (sec. 11430)

q. Filing exceptions with the Board to hearing officer's report on objections/challenges (sec. 11434).

11756 *Format and Content of "Request for Advice":* Submit an original and seven copies of transmittal memo, mark one copy "Division of Operations Management." Caption the memo "Request for Advice" and arrange under the following headings:

a. Charge

b. Issues (note clearly the specific issues on which advice is sought)

c. Facts (set forth concise statement of relevant facts including the resolution of credibility)

d. Region's position (spell out Region's position respecting each issue, indicating any differences among the regional personnel involved)

e. Analysis (each position—under d above—should be supported in the analysis and pertinent facts set forth. Analysis should be only as comprehensive as regional time permits)

f. Related cases, if any (note current status of all related cases).

11770–11828 *Subpoenas*

Section 11(1) of the Act provides that the Board, or any Member, may issue subpoenas calling for attendance and testimony of witnesses or the production of evidence in any investigation or proceeding.

NOTE: Effective December 14, 1970, Section 11(3) of the Act was repealed by P.L. 91–452, which substituted therefor provisions on immunity of witnesses under Title 18, U.S.C. including subsections 6002 and 6004. See also Rules and Regulations 102.31(c) effective 12–14–70. Therefore, whenever a witness in a Board proceeding claims privilege, it is necessary for the Agency to obtain the Attorney General's approval before compelling the witness to testify or provide other information. Requests for such authorization and the reasons in support thereof should be addressed to the Division of Operations Management.

11770 *Investigative Subpoenas:* During certain investigations, in both R and C cases, resort to subpoenas will be necessary in order to ascertain the facts on which to base an administrative decision on the merits.

(Since the object of investigative subpoenas is the ascertainment of facts on which administrative decisions may be based, they should not be used *after* a regional decision to issue complaint unless Division of Operations Management clearance has been procured.)

There is no comparable right to an investigative subpoena available to parties other than General Counsel.

11770.1 *Application for Investigative Subpoena:* The investigative subpoena should be requested of the Regional Director by the attorney assigned to the case. (If no attorney assignment has been made up to this point, it should now be made.) The application, in writing, should contain a statement of the scope of the information or documents sought and of their relevance.

11770.2 *Issuance by Regional Director:* The Regional Director, *where there are no foreseeable problems of enforceability,* has authority to issue an investigative subpoena without clearance by the Division of Operations Management:

a. Where a potential witness or custodian of needed records is willing to testify or to produce the records only if subpoenaed;

b. Where the object of the desired subpoena is the ascertainment of "commerce" data; the party to be called is a party to the case or the records required are those of a party to the case; *and* there is reasonable cause to believe that the Board would assert jurisdiction;

c. Where the object of the desired subpoena is the procurement of an eligibility list for an impending election; or

d. Where the object of the desired subpoena is the procurement of a payroll list of unit employees to determine the majority status of a union in a C case (sec. 10058.4).

Clearance by the Division of Operations Management should be sought in all other situations. Requests for clearance should contain a copy of the memorandum accompanying the application, any other information deemed relevant, and the Region's recommendations.

Investigative subpoenas, when issued, should be returnable at a time certain before the Regional Director, where this is at all practicable.

11770.3 *Reports to the Division of Operations Management:* When problems of enforceability arise following clearance by the Division of Operations Management to issue investigative subpoenas, the Regional Director should report developments on the matter thereafter to the Division of Operations Management.

11772 *Trial or Hearing Subpoenas:* The need for subpoenas calling for testimony or the production of records at a C or R hearing is a matter initially to be determined by the attorney or other Board agent involved, in consultation with his/her supervisor.

In addition to the necessity for the subpoena, however, counsel must take into consideration the potential enforcement of the subpoena. The subpoena should not be requested if it appears that it cannot be enforced in the event of noncompliance. Furthermore, if there are new or doubtful legal problems of enforceability, the matter should be submitted to the Division of Operations Management before the subpoena is requested.

11772.1 *Application for Subpoena:* Application for a subpoena made prior to the hearing (whether by a Board agent or by other parties) should be made to the Regional Director; one made at the hearing should be made to the administrative law judge or hearing officer, as the case may be, and may be made ex parte. The Rules and Regulations call only for a written application for subpoenas; neither the name of the witness nor the description of the documents need be included.

For supervisory purposes, a Regional Director may require staff members to notify him/her of the name of any person whose testimony is being sought and the description of any documents whose production is being sought, and to explain the necessity therefor.

11772.2 *Issuance by Regional Director:* Where prehearing application has been made of the Regional Director, he/she issues the requested trial or hearing subpoena.

11774 *Persons Subpoenaed:* All witnesses the trial attorney expects to use at the hearing should be subpoenaed. Exceptions may be made where the witness has a definite personal interest or stake; e.g., a charging party, an 8(a)(3), or an 8(b)(2).

Where Board personnel are subpoenaed, see *Subpoenas of and Testimony by Board Personnel*, sections 11820–11828.

11776 *Subpoenas Duces Tecum:* A subpoena duces tecum should be drafted as narrowly and specifically as is consistent with the ends sought. It is desirable that the use of the word "all" in the description of records be avoided wherever possible. For example, the phrase "the corporate records showing total purchases" might be substituted for the phrase "all books, records, documents, and other writings that will show total purchases." In all but the exceptional case, it is advisable to provide, *in the body of the subpoena*, for alternatives in lieu of physical production; e.g., that the party against whom the subpoena runs may furnish a signed statement setting forth the desired information, provided that pertinent records are made available to Board agents for the purpose of checking the accuracy of the statement.

In the case of a corporation or partnership, where the identity of the person who has legal custody of the records desired is known and where the same person is the one whose "explanatory" testimony is necessary, the subpoena duces tecum should be addressed to him/her. Where the legal custodian and/or person who can explain the records is unknown, a subpoena duces tecum should be addressed to the corporation, the style under which partnership operates, or one of the partners; and a subpoena ad testificandum should be served on a person who is known or believed to be familiar with the records.

11778 *Service:* Subpoenas may be served personally, by certified mail, by telegraph, or by delivery at the principal office or business address of the person required to be served. (See Sec. 11(4) of the Act.) A copy of the subpoena shall also be served on any attorney or other representative of the party or witness who has entered a written appearance in the proceeding on behalf of the party or witness. If a party or witness is represented by more than one attorney or representative, service on any one of such persons in addition to the party or witness shall satisfy this requirement. See section 10340.

Although no particular period of notice is prescribed, the witness should be served sufficiently in advance of the time when he/she is to appear to enable witness to make necessary arrangements for appearance but, at any rate, in sufficient time to allow him/her 5 days to petition to revoke said subpoena if the witness so desires. Thus, enforcement proceedings, noting therein the failure to file a petition to revoke, may be instituted more promptly. Form NLRB-4685, Notification of Change of Address, may be enclosed with the subpoena.

Claim form for payment of fees and mileage should be enclosed with the subpoena when it is mailed, or given to the witness if the subpoena is hand delivered.

There is no obligation on the part of the General Counsel (as opposed to outside parties) to tender witness fees at the time of service. In cases of need or emergency—but this is to be discouraged—travel accommodations, purchased by travel request, may be furnished in advance (GTR number must be reported on the witness claim).

11780 *Witness Fees:* Witnesses subpoenaed by the General Counsel should be advised that they are entitled to appearance fees and travel expenses, if they make the appropriate claim. Witnesses are paid $30 for each day in which they are required to appear, and are also reimbursed for travel, lodging, and meal expenses. Since the amounts and terms of these reimbursements may vary from time to time, it will be necessary for the trial attorney to refer to the latest Administrative Policy Circular or G.C. memoranda in order to ascertain current terms and rates for reimbursement.

Where a respondent subpoenas employee witnesses, one should attempt to ascertain if those witnesses who appeared were tendered fees and travel expenses. If it comes to the agent's attention that a respondent refuses to pay appropriate witness fees, its action should be viewed as a violation of Section 8(a)(4) and (1) and an appropriate complaint should issue if a charge is filed. *Howard Mfg. Co.*, 231 NLRB 731 (1977).

Those expected to make a claim should be cautioned to make such claim to the trial attorney promptly on discharge under the subpoena. Claim forms should be prepared in advance for every witness subpoenaed. The form should be completed at the hearing for any witness who wishes to make a claim, and he/she should sign the claim on discharge. Approval of a witness fee claim is made by the trial attorney.

Although witnesses called by an employer or union are often compensated *for time lost* from their jobs while appearing and testifying, there is no like compensation paid by the Government.

11782 *Petition to Revoke:* If a subpoenaed person does not intend to comply with the subpoena, he/she may, within 5 days, file a petition to revoke.

Petitions to revoke are available both for subpoenas ad testificandum and for subpoenas duces tecum.

Moreover, they may be based on the ground that the evidence the production of which is being required does not relate to any matter under investigation, that the subpoena under attack does not describe with sufficient particularity the evidence the production of which is required, *or if for any other reason sufficient in law the subpoena is otherwise invalid.*

11782.1 *Petition Filed Prior to Hearing:* A petition filed prior to a hearing is filed with the Regional Director. If the subpoena under attack is an *investigative subpoena* in a C case, the Regional Director should refer it to the Board for ruling; if it is a *hearing subpoena in a C case*, the petition should be referred to the administrative law judge and with a copy of the subpoena attached. If it is either an investigative or hearing subpoena *in an R case*, the Regional Director may rule on it or refer it to the hearing officer.

11782.2 *Petition Filed at Hearing:* If the petition to revoke is filed *at* a hearing, it should be filed with and ruled on by the administrative law judge or hearing officer, as the case may be.

11782.3 *Notice of Filing:* Notice of the filing of the petition to revoke (which need not have been served on all parties) should promptly be given by the Regional Director, administrative law judge, or hearing officer, as the case may be, to the party at whose request the subpoena was issued.

11782.4 *Five-Day Period:* A problem arises when a subpoena duces tecum, served shortly before or during a hearing, is returnable forthwith or otherwise short of the 5 days from service allowed for a petition to revoke pursuant to Section 11(1) of the Act and Section 102.31(b) of the Rules. Is the person served entitled to a continuance for the remainder of the 5-day period merely on signifying that he/she intends to file a petition to revoke? It may, of course, be argued, in rebuttal (if it is true), that no prejudice could result by making the person file or testify even though the time had not expired, absent a showing of grounds for revocation. The court decision in *NLRB v. Strickland*, 220 F.Supp. 661 (D.C.W. Tenn., 1962), affd. 321 F.2d 811 (6th Cir. 1963), is authority for viewing the 5-day period as a maximum and not a minimum insofar as subpoenas ad testificandum are concerned, but that issue as regards subpoenas duces tecum has not been judicially resolved with finality and administrative law judges have not been definitive. As earlier indicated, wherever possible, service should be made at least 5 days before the return date.

11782.5 *Not a Part of the Record:* Actions and documents in connection with petitions to revoke, including rulings, do not go into the record unless the aggrieved person specifically requests it.

11790–11806 *Enforcement of Subpoena*

11790 *General:* A decision to issue a subpoena carries with it prima facie authority to enforce; and, normally, clearance to enforce will not be necessary. Where, however, there have been intervening circumstances (between decision to issue and necessity of enforcement) that create enforcement problems, the matter of enforcement should be referred to the Division of Operations Management for clearance, and consultation with Division of Enforcement Litigation to determine whether novel legal issues may be involved (sec. 11790.4). Example: Where novel contentions were made in an unsuccessful petition to revoke.

Where intervening circumstances have made enforcement unnecessary as a practical matter (e.g., where an election can be or has been conducted on an "affidavit" basis in the absence of compliance with a subpoena calling for a list of eligible voters), enforcement proceedings should not be instituted.

11790.1 *Enforcement of Subpoena Issued at Request of Private Parties:* Section 11(2) of the Act provides that subpoena enforcement proceedings must be instituted "upon application by the Board." The Rules and Regulations provides that proceedings for enforcement of subpoenas issued at the request of a private party shall be instituted by the General Counsel in the name of the Board "on relation of such private party" but only if, in the Board's judgment, the enforcement of such subpoena *would be consistent with law and with the policies of the Act.*

Examples of questions falling in this category are subpoenas of Board personnel or documents and cases where Board processes are being abused. Requests should not be *denied* without Washington clearance; doubtful cases should be submitted; the proceeding may be instituted forthwith otherwise.

The Regional Office shall institute subpoena proceedings and keep the Division of Operations Management informed if unusual circumstances arise.

11790.2 *Enforcement of Subpoena Issued at Request of the General Counsel:* Enforcement proceedings with respect to subpoenas requested by the General Counsel are handled by the Regional Office involved (secs. 11751.4b and 11754.2g).

11790.3 *Papers and Pleadings to Washington; Enforcement Proceedings:* The Region should forward to the Division of Operations Management, on an up-to-date basis, the following documents or information:

a. Conformed copy of Board's application and court's show-cause rule

b. Copies of respondent's answer and motions, if any

c. Copies of briefs or memorandums filed by Board or respondent

d. Court action after argument on rule

e. Copies of court decision and order

f. Further information bearing on the proceeding.

11790.4 *Appeal Proceedings:* Appeal proceedings will be handled by the Division of Enforcement Litigation. For that reason, special problems arising during enforcement that may create problems in the appeal should be referred to the Assistant General Counsel, Special Litigation, Appellate Court Branch.

11792 *Procedure:* It must be kept in mind that certain U.S. district courts follow practices peculiar to their own local setting. For example, the Southern District of New York, as possibly the other Federal courts in New York State, follows the code practice in the courts of that State of requiring applications for orders to show cause, which are presented ex parte, to recite that no prior application has been made for the relief requested. Other district courts may also have requirements peculiar to their locale. In preparing papers, keep that factor in mind and check with the clerk of the court for conformity of proposed application with the particular procedural requirements of that court.

Under Rule 11 of the Federal Rules, "verification" is not required when the petition is signed by counsel, unless the verification is otherwise required by statute or rule. While it is likely that all district courts follow the Federal Rules, it is well to check the local rules of the district court in which the proceeding is brought to determine whether the petition need be verified.

11792.1 *Patterns Provided:* Four pattern forms suited for general use in subpoena enforcement proceedings are provided:

Pattern 51	Rule to show cause (sec. 11806.1)
Pattern 52	Application for order requiring obedience to subpoena duces tecum (see sec. 11802.1)
Pattern 53	Application for order requiring obedience to subpoena ad testificandum (see sec. 11800.1)
Pattern 54	Notice of institution of proceeding to compel obedience to subpoena ad testificandum (see sec. 11804.1)

11792.2 *Service by Registered Mail:* For language setting out service of subpoena by registered mail, see paragraph e of pattern 52.

11792.3 *Personal Service:* For language setting out personal service, see paragraph d of pattern 53.

11792.4 *Revocation:* Paragraph f of pattern 52 sets out the statutory procedure for administrative revocation of the subpoena, and alleges that the respondent failed to utilize this procedure. This allegation will support a contention that the respondent is estopped from questioning the validity of the subpoena or the materiality of the evidence requested. Such a contention was sustained in *NLRB v. Brown & Root* (D.C. Tex., unreported, decided May 19, 1949); see also *NLRB v. Brown*, 5 LC ¶ 60,986 (D.C. Ala. 1942).

11792.5 *Motion to Quash:* If the respondent did move to quash the subpoena and the motion was denied, use paragraph e of pattern 53. Paragraph f of pattern 52 alleges that the respondent did not appear in answer to the subpoena.

11792.6 *Refusal to Testify:* If the respondent did appear at the hearing but refused to testify or produce the required records, see paragraph f of pattern 53.

11794 *Jurisdiction*

11794.1 *Jurisdiction of Board to Issue Subpoenas:* Section 11(1) of the Act grants statutory authority to the Board for exercise of subpoena power, which is similar to that of other administrative agencies. The intent of Congress to confer such authority is clear (see S. R. No. 573, 74th Cong., 1st Session; sec. 6(c) of the Administrative Procedure Act, 5 U.S.C. § 556(c)) and the courts have long upheld the power of administrative agencies to issue subpoenas (see *Interstate Commerce Commission v. Brimson*, 154 U.S. 447 (1894); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946)).

11794.2 *Jurisdiction of Courts to Enforce Subpoenas:* The district courts receive their power to order enforcement of subpoenas issued by the Board by virtue of Section 11(2) of the Act. The granting of such power has been approved and exercised repeatedly by the courts. The Administrative Procedure Act, section 6(c), 5 U.S.C. § 556(c), has affirmed the courts' jurisdiction in this respect.

11794.3 *Collateral Proceedings:* The respondent's denial that it is engaged in interstate commerce and therefore not subject to the Board's jurisdiction does not give it the right to have that issue determined by the court in a subpoena enforcement proceeding. See also *NLRB v. Barrett Co.*, 120 F.2d 583 (7th Cir. 1941), where the court upheld the Board's right to enforcement of a precomplaint subpoena calling for commerce data. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 214 (1894); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943); *President v. Skeen*, 118 F.2d 58 (5th Cir. 1941); *Walling v. Benson*, 137 F.2d 501 (8th Cir. 1943); *NLRB v. Northern Trust Co.*, 56 F.Supp. 335 (D.C. Ill. 1944), affd. 148 F.2d 24 (7th Cir. 1945). The Board has exclusive power to make the initial determination of its jurisdiction in any case pending before it. *American National Bank*, supra; *Oklahoma Press Pub. Co.*, supra. Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938), where Bethlehem sought to attack the Board's jurisdiction in an injunction proceeding. The Administrative Procedure Act has not changed this rule. (See sec. 6(c), 5 U.S.C. § 556(c).)

11796 *Relevance:* The testimony or documentary evidence sought to be adduced by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board. This requirement is usually satisfied by an allegation showing the relevancy of the evidence sought with reference to the petition or charge, or complaint or notice of hearing, which is attached to the application as an exhibit. *Oklahoma Press Publishing Co.*, supra, 214–215.

11798 *"Fishing Expedition" as a Defense:* It can well be anticipated that the respondents will contend in many instances where enforcement of a subpoena duces tecum is sought that the Board is seeking to engage in a "fishing expedition." Obviously, the answer to such a contention is found in the careful draftsmanship of the subpoena. Books, records, etc., required to be produced, should be described with certainty and particularity both with reference to content and time period. The *Oklahoma Press* decision of the Supreme Court is especially illuminating on this problem. In that decision all of the important "fishing expedition" cases, including *Hale v. Henkel*, 201 U.S. 43 (1906); *F.T.C. v. American Tobacco Co.*, 264 U.S. 298 (1924), and *Brown v. U.S.*, 276 U.S. 134 (1928), are carefully discussed and analyzed, and many earlier misconceptions as to the state of the law cleared up. Little can be added to the opinion of the court on the subject, and all attorneys should be thoroughly familiar with the discussion and analysis, particularly *Oklahoma Press Publishing Co.*, supra, 202, 214.

11800 *Pattern 53, Application for Order Requiring Obedience to Subpoena ad Testificandum:* The caption on this form shows that the proceeding is brought in the name of the Board, but on relation of the party who requested the subpoena.

(If the subpoena was issued at the request of the General Counsel or his agent, see pattern 52. Whenever an ex rel. proceeding is brought, pattern 54, which is the notice to the relator or his attorney, should be used.)

The respondent here is an individual; if a corporation, see pattern 52.

11800.1 *Pattern 53*

IN THE UNITED STATES DISTRICT COURT
FOR THE ______ DISTRICT OF
__________ DIVISION

NATIONAL LABOR RELATIONS BOARD ON RELATION OF LOCAL 1, U.S.W. (Ind.)	Civil No. 13579
Applicant	Application for Order
v.	Requiring Obedience
JOHN DOE	to Subpoena ad
Respondent	Testificandum

The National Labor Relations Board, hereinafter referred to as the Board, an administrative agency of the Federal Government created pursuant to the National Labor Relations Act, as amended (29 U.S.C. § 151 et seq.), hereinafter referred to as the Act, by its General Counsel, and by John J. Jones, its Regional Attorney for Region 42, on relation of Local 1, USW (Ind.), respectfully applies to this honorable court, pursuant to Section 11(2) of the Act, for an order requiring John Doe to obey a certain subpoena ad testificandum, issued by the Board and duly served on him in the manner provided by law. In support of said application, upon information and belief, the Board respectfully shows as follows:

a. This court has jurisdiction of the subject matter of the proceeding, and of the person of the Respondent, by virtue of Section 11(2) of the Act, in that the inquiry in aid of which the subpoena was issued was carried on within this judicial district [add or substitute any other criterion applicable under 11(2), such as that the Respondent resides or does business within this judicial district].

b. Pursuant to the provisions of Section 6 of the Act, the Board has issued Rules and Regulations (hereinafter referred to as the Rules) governing the conduct of its operations, which Rules and Regulations have been duly published in the Federal Register (24 F.R. 9095), as provided for in the Administrative Procedure Act (5 U.S.C. § 552). This court may take judicial notice of the said Rules and Regulations by virtue of 44 U.S.C. 307.

c. Pursuant to the provisions of Section 10(b) of the Act, there is now pending before the Board an unfair labor practice proceeding entitled "Local 1, United Squibb Workers of America (U.S.W., Ind.), and Fireworks Machinery Corp.," Case 42-CC-233, wherein there has been filed and served a charge, a complaint and notice of hearing was issued, and an answer has been filed, all in the manner and form required by law and Sections 102.9, 102.10, 102.15, and 102.20 of the Board's Rules. Copies of the said charge, complaint and notice of hearing, and answer are annexed hereto and made part hereof, designated exhibits A, B, and C, respectively.

d. In relation to the proceeding described in paragraph c, above, the Board did cause to be issued, on January 2, 19__, at the written request of the relator, USW (Ind.), a subpoena ad testificandum, directed to Respondent John Doe, requiring said Respondent to appear and testify at a hearing before an administrative law judge of the Board to be held on January 7, 19__, at 1 o'clock in the afternoon in the hearing room of the Board located at 4 Mammoth Drive, Zenith City, State of Nebraska, all in the manner and form provided for in Section 11(1) of the Act and Section 102.31(a) of the Rules. Said subpoena was duly served on Respondent John Doe by personal service on him thereof, in the manner provided for by Section 11(4) of the Act and Section 102.111 of the Rules. Copies of the subpoena and the affidavit of service thereof are attached hereto marked "exhibits D and E," respectively.

e. Pursuant to Section 11(1) of the Act and Section 102.31(b) of the Rules, said Respondent John Doe did, on January 7, 19__, file with Ringer S. Williams, the Administrative Law Judge designated by the Board to hear the case, a motion to revoke the subpoena, on certain grounds herein set forth, which motion was denied by the Administrative Law Judge by formal order issued on January 21, 19__. Copies of the motion to revoke the subpoena and the order denying the motion are annexed hereto marked "exhibits F and G," respectively.

f. Pursuant to said subpoena, Respondent John Doe did appear at the hearing before the Administrative Law Judge on January 28, 19__, and was sworn as a witness in said proceeding. Questions were propounded to him by counsel for relator U.S.W. (Ind.), which questions the Respondent refused to answer on the ground of irrelevancy and immateriality. The Administrative Law Judge, upon consideration of the purpose of the examination, ruled that the evidence sought was relevant and material to the issues in litigation before him, and directed the Respondent to answer. The Respondent refused to comply with the ruling of the Administrative Law Judge, withdrew from the witness stand, and left the hearing room. The Administrative Law Judge, ruling that the testimony of said Respondent John Doe is necessary and pertinent to a resolution of the issues pending in said unfair labor practice proceeding, adjourned the hearing to afford applicant an opportunity to institute these proceedings to compel Respondent John Doe to testify as required by law. A copy of the pertinent portion of the transcript of the hearing before the Administrative Law Judge is annexed hereto marked "exhibit H."

g. The refusal of Respondent John Doe to give testimony in obedience to the subpoena ad testificandum, as directed by the Administrative Law Judge, which testimony is relevant and material to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of Section 11(2) of the Act, which conduct has impeded and continues to impede the Board in the investigation of the matters before it, and has prevented and is preventing the Board from carrying out its duties and functions under the Act.

WHEREFORE, the applicant, National Labor Relations Board, respectfully prays:

(1) That an order to show cause issue forthwith directing the Respondent, John Doe, to appear before this court on a day certain to be fixed in said order, and that he show cause, if any there be, why an order should not issue directing him to appear before Ringer S. Williams, the Administrative Law Judge designated by the Board in Case 42–CC–233 pending before said Board, at such time and place as said Administrative Law Judge may designate, and there give testimony and answer any and all questions relevant and material to the matters under investigation and in question in said proceedings before the Board;

(2) That upon the return of said order to show cause, an order issue out of this court requiring the Respondent, John Doe, to appear before said Administrative Law Judge, Ringer S. Williams, at a time and place to be fixed by said Administrative Law Judge, and there give testimony and answer any and all questions relevant and material to the matters under investigation and in question in said proceedings before the Board; and

(3) That the applicant, National Labor Relations Board, have such other and further relief as may be necessary and appropriate.

Dated, Zenith City, Neb.

this_______ day of March 19__.

National Labor Relations Board
By ________________________
General Counsel

____
John J. Jones
Regional Attorney
Region 42
4 Mammoth Drive
Zenith City, Neb.

best copy available

11802 *Pattern 52, Application for Order Requiring Obedience to Subpoena Duces Tecum:* This form is designed to be used where the subpoena issued at the request of the General Counsel or his agent, and was directed to a corporate respondent; for situations where the subpoena was issued at the request of a private party, or where the respondent is an individual, see pattern 53 (sec. 11800.1).

11802.1 *Pattern 52*

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF

_______ DIVISION

NATIONAL LABOR RELATIONS BOARD	
Applicant	Civil No. 13579
v.	Application for Order
GOODWILL R. R. CO.	Requiring Obedience to
Respondent	Subpoena Duces Tecum

The National Relations Board, hereinafter referred to as the Board, an administrative agency of the Federal Government created pursuant to the National Labor Relations Act, as amended (29 U.S.C. § 151 et seq.), hereinafter referred to as the Act, by its General Counsel, and by John J. Jones, its Regional Attorney for Region 42, respectfully applies to this honorable court, pursuant to Section 11(2) of the Act, for an order requiring the Goodwill R. R. Co. to obey a certain subpoena duces tecum, issued by the Board and duly served on it in the manner provided by law. In support of said application, upon information and belief, the Board respectfully shows as follows:

a. This court has jurisdiction of the subject matter of the proceeding, and of the Respondent, by virtue of Section 11(2) of the Act, in that the inquiry in aid of which the subpoena was issued was carried on within this judicial district, and the Respondent is a domestic corporation chartered under the laws of the United States and licensed to do business in the State of Nebraska, maintaining an office for that purpose at 125 Omnibus Avenue, Zenith City.

b. Pursuant to the provisions of Section 6 of the Act, the Board has issued Rules and Regulations (hereinafter referred to as the Rules) governing the conduct of its operations, which Rules and Regulations have been duly published in the Federal Register (24 F.R. 9095), as provided for in the Administrative Procedure Act (5 U.S.C. § 552). This court may take judicial notice of the said Rules and Regulations by virtue of 44 U.S.C. § 307.

c. Pursuant to the provisions of Section 10(b) of the Act, there is now pending before the Board an unfair labor practice proceeding, *Fireworks Machinery Corp. (Local 1, United Squibb Workers of America (U.S.W. Ind.))*, Case 42-CA-233, wherein there has been filed and served a charge, a complaint and notice of hearing has issued, and an answer has been filed, all in the manner and form required by law and by Sections 102.9, 102.10, 102.15, and 102.20 of the Board's Rules. Copies of the said charge, complaint and notice of hearing, and answer are annexed hereto and made part hereof, designated exhibits A, B, and C, respectively.

d. In relation to the proceeding described in paragraph c, above, the Board did cause to be issued, on January 2, 19__, at the written request of a representative of the General Counsel, a subpoena duces tecum, directed to the Respondent, and requiring said Respondent to appear at a hearing before an administrative law judge of the Board to be held on January 7, 19__, at 1 o'clock in the afternoon, in the hearing room of the Board located at 4 Mammoth Drive, Zenith City, State of Nebraska, and to then and there give testimony and produce certain records and papers more fully described as follows:

> Records and papers in the possession of the Goodwill R. R. Co., including bills of lading, consignments, receipts, or other documents showing shipment of goods via said Goodwill R. R. Co., to and from Fireworks Machinery Corp., Zenith City, State of Nebraska, for the calendar year 1981.

Said subpoena duces tecum was issued under the authority of, and in the manner and form provided for, in Section 11(1) of the Act and Section 102.31(a) of the Rules. A copy of the subpoena is attached hereto marked "exhibit D."

e. The subpoena described in paragraph d, above, was duly served on Respondent Goodwill R. R. Co. by addressing the original thereof and sending same by registered mail to John Doe, superintendent of the Zenith City Division of said railroad, at the offices described in paragraph a, above, and receipt thereof on January 3, 19__, has been duly acknowledged, all in the manner and form provided for in Section 11(4) of the Act and Section 102.111 of the Rules. A photostatic copy of the return post office receipt is attached hereto marked "exhibit E."

f. Although Section 11(1) of the Act and Section 102.31(b) of the Rules provide for a period of 5 days after service of a subpoena within which any person served with the same and wishing to urge any objections thereto may petition the Board to revoke the subpoena, the Respondent did not within 5 days after service of the subpoena on it or at any time thereafter file any petition to revoke the subpoena. Nevertheless, said Respondent failed to appear at said hearing on January 7, 19__, in response to said subpoena or to produce the evidence as therein called for and as required by its terms, and has at all times since failed and refused and continues to fail and refuse to produce the records and documents called for in said subpoena as described in paragraph d, above.

g. The refusal of Respondent Goodwill R. R. Co. to appear and to produce the required records in obedience to the subpoena duces tecum, which records are relevant and material to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of Section 11(2) of the Act, and by thus impeding and continuing to impede the Board in the investigation of the matters before it, the Respondent has prevented and is preventing the Board from carrying out its duties and functions under the Act.

WHEREFORE, the applicant, National Labor Relations Board, respectively prays:

(1) That an order to show cause issue forthwith directing the Respondent, Goodwill R. R. Co., to appear before this court on a day certain to be fixed in said order, and that it show cause, if any there be, why an order should not issue directing it to appear before the Administrative Law Judge designated by the Board to take evidence in Case 42-CA-233 pending before said Board, at such time and place as said Administrative Law Judge may designate, and there produce the records described in paragraph d, above, and to give testimony and answer any and all questions relevant and material to the matters under investigation and in question in said proceedings before the Board;

(2) That upon the return of said order to show cause, an order issue out of this court requiring the Respondent, Goodwill R. R. Co., to appear before the Administrative Law Judge, at a time and place to be fixed by said Administrative Law Judge, and there produce the records described in paragraph d, above, and give testimony and answer any and all questions relevant and material to the matters under investigation and in question in said proceedings before the Board; and

(3) That the applicant, National Labor Relations Board, have such other and further relief as may be necessary and appropriate.

Dated, Zenith City, Neb.

this _______ day of March 19__.

National Labor Relations Board
By ____________________________
General Counsel

____
John J. Jones
Regional Attorney
Region 42
4 Mammoth Drive
Zenith City, Neb.

11804 *Pattern 54. Notice of Institution of Proceeding to Compel Obedience to Subpoena ad Testificandum:* Section 11(2) of the Act provides that a proceeding to enforce a subpoena issued by the Board must be instituted "upon application of the Board." Section 102.31(d) of the Rules and Regulations provides that where the subpoena was issued at the request of a private party, enforcement proceedings shall be instituted by the General Counsel in the name of the Board "but on relation of such private party." The same section further provides that "neither the General Counsel nor the Board shall be deemed thereby to have assumed responsibility for the effective prosecution" of the enforcement proceedings. Pattern 54 is designed to put the relator on notice that he is primarily responsible for prosecuting the case before the court and will also serve to establish his standing in the court to participate in the proceedings. This form should be issued to the relator or his attorney in every ex rel. proceeding, and copies should be served on the respondent and filed with the court.

The filing of the application, and issuance of Pattern 54 notice, does not mean necessarily that the General Counsel will withdraw from further participation in the court proceedings. Each case must be handled on its own facts. For example, if the respondent questions the Board's jurisdiction, or its power to issue the subpoena, or the validity of the issuance, the General Counsel may wish to retain control of the trial of the case, since the issues raised go to the Board's basic authority, and an adverse decision may have an effect on other cases. On the other hand, if the respondent questions only the relevancy of the evidence sought to be adduced, the relator, who is primarily interested in obtaining such evidence, should be permitted to try the case and to prove its materiality.

11804.1 *Pattern 54*

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE _____ DISTRICT OF
_______ DIVISION

NATIONAL LABOR RELATIONS BOARD, ON RELATION OF LOCAL 1, U.S.W. (Ind.)	
Applicant	Notice of Institution
	of Proceeding to Compel
v.	Obedience to Subpoena
	Ad Testificandum
JOHN DOE	
Respondent	

To: John Smith, Esquire
Address
City

Attorney for Relator

Local 1, U.S.W. (Ind.)

Sir:

Please take notice that the General Counsel of the National Labor Relations Board, in the name of the Board, but on relation of Local 1, U.S.W. (Ind.), has petitioned the court for an order enforcing obedience to a subpoena ad testificandum issued by the Board at the request of Local 1, U.S.W. (Ind.). Attached hereto are copies of the order to show cause and the application for order requiring obedience to subpoena ad testificandum, filed with the court on ____________, 19__.

This proceeding has been instituted at your request pursuant to the provisions of Section 11(2) of the National Labor Relations Act, as amended, and of Section 102.31(d) of the Rules and Regulations, Series 8, as amended, of the National Labor Relations Board. We specifically call your attention to that portion of said Section 102.31(d) of the Rules and Regulations that provides that by bringing this proceeding "neither the General Counsel nor the Board shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the Court."

____
John J. Jones
Regional Attorney
Region 42
National Labor Relations
Board

Dated this _______ day

of _______ 19__.

11806 *Pattern 51, Rule to Show Cause:* Although this form was drawn with relation to an application for enforcement of a subpoena duces tecum, issued to a corporate respondent, it is equally applicable, with appropriate modification, in a proceeding against an individual respondent, and in a proceeding to enforce a subpoena ad testificandum.

Note that service on the respondent may be made by serving any officer or agent, and the process may be served by registered mail or in any manner provided for in the Federal Rules (see Rules 4 and 5).

11806.1 *Pattern 51*

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF

_______ DIVISION

NATIONAL LABOR
RELATIONS BOARD

Applicant Civil No. 13579

v. Rule to Show Cause

GOODWILL R. R. CO.

Respondent

The National Labor Relations Board, hereinafter called the Board, by its General Counsel, and by John J. Jones, its Regional Attorney for Region 42, having filed its application for an order requiring Respondent Goodwill R. R. Co. to obey and comply with a certain subpoena duces tecum duly and properly served on said Respondent as set forth in said application, and good cause appearing therefor, it is hereby

ORDERED that Respondent Goodwill R. R. Co. appear and show cause, if any there be, in Room 200, United States Courthouse, Federal Square, City of Zenith, State of Nebraska, on the ____ day of April 19__, at 9 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order of this court should not issue directing the Respondent, Goodwill R. R. Co., to appear before a duly designated administrative law judge of the Board, at such time and place as the administrative law judge may determine, and there produce the books, papers, records, and other data described in the subpoena duces tecum served on the Respondent, and give testimony, in connection with the proceeding now pending before said Board pursuant to Section 10 of the National Labor Relations Act, as amended (29 U.S.C. § 151 et seq.), and it is

FURTHER ORDERED that services on the Respondent of a copy of the order to show cause and of the application on which it is issued, be made on or before the ____ day of March 19__, by service thereof on any officer or agent of said Respondent, and that said Respondent shall file and serve its answer to the application not later than April ____, 19__. Service of a copy of this order, the application, and the Respondent's answer, in any manner provided for by the Rules of Civil Procedure for District Courts of the United States, or by registered mail, shall be deemed good and sufficient service.

/s/ D. W. Brown
United States District Court Judge

Dated, Zenith City

State of Nebraska,

this ____ day of March 19__.

11820–11828 *Subpoenas of and Testimony by Board Personnel*

11820 *General Disclosure of Documents:* Section 102.117 of the Rules and Regulations describes, generally, which of the Board documents, records, and materials are open to public inspection and which are not. Further guidance with respect to the disclosure of documents contained in the case file is contained in G.C. Memos 76–13, 79–9, and 79–87. Section 102.118 provides that no Board agent shall produce any Board documents or testify with respect to information coming to his/her attention in any court or Board hearing, whether in response to a subpoena or otherwise, without the written consent of the Board, its Chairman, or the General Counsel, whoever has supervision or control of the documents or Board agent. (However, see sec. 10663 regarding production of certain material, etc., with regard to backpay specifications.) This applies to hearings of the Board itself as well as to other proceedings. (With respect to in-hearing motions for production of pretrial statements of witnesses, see secs. 10394.7, 10398 *caveat*, and 10400.)

11822 *Steps to be Taken on Receiving Subpoena:* When a Regional Office staff member receives a subpoena, he/she should immediately:

a. Ascertain, if possible, the nature of the testimony being sought (this is unnecessary where the subpoena is a subpoena duces tecum).

b. Notify the party on whose behalf the subpoena is being served of the existence of Rule 102.118 (do not undertake to act as an agent in requesting the General Counsel's permission to testify).

c. Apprise the Division of Operations Management of the facts, so that a request for permission to testify (if submitted) can more cogently be considered, and if novel problems are involved coordinate with the Assistant General Counsel, Special Litigation, Appellate Court Branch (sec. 11828).

If authorization is not granted, a petition to revoke or motion to quash, whichever is applicable, should be filed on appropriate grounds.

If authorization to testify is granted, the Board agent will respond to the subpoena and testify. (See sec. 11826.)

11822.1 *Witness Fees and Allowances:* An employee who testifies in his/her *official capacity* in *private litigation* is required to collect the authorized witness fees and allowances for expenses of travel and forward such moneys, with covering memo and certification of service, to the Finance Section. The employee is in official duty status.

11824 *Motion to Quash/Petition to Revoke: With respect to non-Board proceedings*, a motion to quash will, in most jurisdictions, probably be an appropriate responsive pleading only to a subpoena duces tecum. In the case of a subpoena ad testificandum the Board employee may have to appear personally and decline to answer on appropriate grounds (sec. 11827).

11825 *With Respect to Board Hearings*, if time permits, a petition to revoke should be filed for either a duces tecum or ad testificandum subpoena. A supporting memorandum along the lines described above need not be filed unless requested by the administrative law judge or hearing officer. (See secs. 11782–11782.5 for details on petitions to revoke.)

11826 *With Respect to Either Type of Proceeding*, should the motion to quash or the petition to revoke be granted, there need be no further response to the subpoena. (If a petition to revoke in a Board proceeding is denied, a request for special permission to appeal to the Board should be directed to the Board.)

11827 *Appearance/Testimony/Production:* Should a motion to quash or petition to revoke be denied (and not reversed on appeal), should there have been insufficient time in which to file the motion or petition, or should a motion to quash or its equivalent not be applicable in the jurisdiction involved, the subpoenaed Board agent should, unless otherwise directed by the Board, the Chairman of the Board, or the General Counsel, make an appearance at the trial or hearing. The Board agent should take the oath and answer questions calling for his/her name and occupation. In answer to further questions, the agent should respectfully decline to answer or to produce records for the reasons that were previously asserted in the motion to quash or petition to revoke, or that would have been asserted therein had one been filed.

Should prior consent have been procured, the Board agent should testify or produce records to the extent covered by the consent. With respect to other matters, except those clearly not coming to him/her in an official capacity, the agent should decline on the grounds on which permission was denied.

If the Board agent should nevertheless be ordered to give information or produce records, the attorney representing the Board agent should request a short postponement to enable him/her to communicate with Washington.

11828 *Instructions to Testify or Produce Records:* Should the Board agent be ordered to give information or produce records in violation of Section 102.118, the attorney representing the Board agent should request that action be held up for a short time to enable him/her to contact Washington.

The agent should communicate with the Division of Operations Management. It is anticipated that Washington, through the Division of Enforcement Litigation, will authorize institution of appropriate proceedings to test the issue, and the court or hearing officer will be so advised.

COURT COSTS

11830 *Court Costs*

11830 *Recovery of Costs in Appellate Court Litigation:* Rule 39 of the Federal Rules of Appellate Procedure permits the prevailing party in actions brought by or against the United States, or any agency or official of the United States acting in his official capacity, to recover costs incurred by him in the litigation.

Regional Office personnel should seek payment of court costs as part of their effort to obtain compliance with the other aspects of the court's mandate. Thus, in communications with the respondent's counsel, the compliance officer should emphasize that compliance with a court mandate includes payment of costs.

Copies of judgments of the courts of appeals may be obtained from the Appellate Court Branch, if not received in the course of ordinary distribution. Checks in payment of costs should be made payable to "Treasurer of the United States" and transmitted to the Finance Section.

Cases in which Regions are having difficulty obtaining the payment of costs should be referred to the Division of Enforcement Litigation. Checks in payment of costs should be made payable to the National Labor Relations Board and transmitted to the Deputy Associate General Counsel, Appellate Court Branch, Division of Enforcement Litigation.

Many respondents may attempt to "settle" court costs in the same manner in which offers are made to settle backpay claims. Since costs are payable to the United States Government and constitute a claim by the Government, Regional Offices should not accept a settlement offer of court costs. Such offers should be referred to the Division of Enforcement Litigation. Thereafter, the Regions may be called on to investigate the accuracy of claims of insolvency or inability to pay the costs and to report their findings to the division. In addition, because of the nature of some of the present unpaid court costs, Regions may be asked to investigate certain pending claims of inability to pay these costs.

The administrative closing of cases in which compliance has been achieved with the exception of payment of costs should be discussed with Enforcement Litigation. See sec. 10772.

11840 *Service, Filing, and Communications with Parties*

11840 *Service of Process and Papers:* For the requirement of service generally, and the acceptable methods of service, see Sections 102.111–102.114 of the Rules and Regulations. For the requirement of service of a particular pleading or other paper consult the rule provision concerning that pleading or paper.

11840.1 *Service and Communications by Board Agents:* Charges and amended charges, complaints and notices of hearing in C cases, final orders, administrative law judges' decisions, and subpoenas must be served personally, by registered mail, by telegraph, or by leaving a copy at the principal office or place of business of the person on whom service is sought. Other process and papers may be served by certified mail.

After a copy of a charge or petition, together with the initial communication, has been served on the parties, and an attorney or other representative has entered an appearance on behalf of a party, copies of all further documents served pursuant to Section 102.111 of the Board's Rules and Regulations, with the exception of subpoenas, will be served on the attorney or representative of record in addition to the party. If a party is represented by more than one attorney or representative, service on any one of such persons in addition to the party satisfies the requirements of Section 102.111, but as a matter of courtesy, an effort should be made to serve all counsel or representatives who have entered an appearance on behalf of the party.

It should be particularly noted that copies of the following documents and communications should be sent to the party and to the attorney or representative of record:

a. Notices and orders issued in connection with unfair labor practice hearings, representation case hearings, and 10(k) hearings

b. Regional Directors' decisions, reports, and supplemental decisions

c. Dismissal letters in unfair labor practice cases and representation cases

d. Letters approving withdrawal requests of unfair labor practice charges or representation petitions

e. Closing compliance letters

f. Consent Election Agreements and Stipulations for Certification Upon Consent Election

g. Representation case certifications.

Where arrangements for an election have been agreed to by the parties with full participation by counsel or representative, notices of election should be sent directly to the parties, with copies to counsel or representative. By the same token, the letter requesting the *Excelsior* list, which accompanies a copy of the approved consent or stipulated election agreement, may be sent to the employer, copy to counsel or representative. The *Excelsior* list supplied by the employer should be sent by the Region directly to the petitioning and intervening parties involved.

In addition, copies of correspondence that confirm some previously agreed-to arrangement or appointment may be sent to the parties involved.

Compliance communications are also covered by the foregoing instructions. However, after the requirements for compliance have been worked out and the respondent has advised us of its intention to comply, the notices that may be required, whether pursuant to an administrative law judge's decision, Board order, court judgment, or settlement agreement, the request for certification of posting, and the instructions concerning details of compliance, can be sent directly to the parties with copies to counsel or representatives.

All other communications, both oral and written, should be with or through only the attorney or representative of record. However, whenever an attorney, representative, or party requests that copies of all written communications be sent to the party or has authorized that a party or person be contacted directly, such request and/or authorization should be honored.

Where special circumstances might warrant a departure from the foregoing instructions, clearance should be obtained from the Assistant

General Counsel before undertaking any direct communication with a party contrary to these instructions.

Designation of Representative as Agent for Service of Documents: See section 10040.6.

11840.2 *Service by a Party:* Where service of papers *by a party* on other parties is required, such service may be made by registered mail, by certified mail, or in any manner permissible in a civil action in the State of the hearing.

11840.3 *Date of Service and Proof:* Date of service shall be day of personal delivery or day of depositing in mail, whichever is applicable. Although proof of service is desirable in all cases, failure to furnish such proof does not affect the validity of the service.

11840.4 *Computation of Period of Time:* Computation of time is controlled by Rule 102.111, which reads as follows:

> . . . (a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next Agency business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.
>
> (b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely: *Provided, however,* the following documents must be received on or before the close of business of the last day for filing:

(1) Charges filed pursuant to Section 10(b) of the Act (see also sec. 102.14).

(2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.

(3) Objections to elections and revised tallies.

(4) Petitions to revoke subpoenas.

(5) Petitions filed pursuant to Section 9(c) of the Act.

11850 *Files*

11850 *Case Files:* The case file should reflect accurately the steps taken in and the current status of a given case. It should be so complete as to provide (1) a successor-assignee with the means whereby with a minimum of duplication, he/she may carry the case on, and (2) a supervisor with a gauge for measurement of the quality of the investigation.

11850.1 *Organization of Files:* Files should be so organized that specific material may be easily found. No special sectional breakdown is required—and the need for organization will often depend on the case and on the extent of the work already done, but a desirable breakdown would consist of sections devoted to the (1) formal (public) documents, (2) memo and correspondence, (3) affidavits and statements, and (4) other documents. (Normally, for easier finding and case reconstruction, the affidavits and statements should be arranged alphabetically, the rest chronologically.)

Normally, the working file should include but one typewritten and printed copy of each item. (Exception, where an affidavit is in longhand, the original and a typed copy should be included.) Extra copies, as may appear to be necessary, should be put into a "temporary" file.

11850.2 *File Should Contain Complete History of Case:* There should be no "gaps." Where an item inserted in the file speaks for itself, it is unnecessary to recite the surrounding facts in a memo, but where, for example, an unsuccessful interview attempt has been made, this should be memoed; in this way, the file will show the point has not been overlooked.

From time to time, if the case is long and involved, the Board agent assigned should, by memo, bring the circumstances up to date and signify further steps to be taken.

11860 *Documentary Evidence*

11860 *Documentary Evidence:* The term "documentary evidence" means any paper whether in written, printed, graphic, or other visual form, containing facts germane to the case that might be necessary to introduce at a hearing. Documentary evidence includes letters, records, charts, pictures, affidavits, and other signed statements.

All documentary evidence should be retained in the original form if possible; otherwise, such evidence should be either photostated or otherwise duplicated. Whenever possible, at least two copies should be available for use.

Unless the source and the circumstances of receipts are self-explanatory, they should be recited in a memorandum.

No marks should be made on documentary evidence. Notes, questions, remarks, or instructions should be inserted on separate sheets and not on the face of the document. This is particularly applicable to the practice that sometimes exists of writing on the document the name(s) of the person(s) in the office to whom it is to be routed; separate routing slips should be used for this purpose.

11870–11872 *Official Reporting Service*

11870 *Official Reporting Service*

11870.1 *General:* Contracts, based on competitive bids, are awarded annually for reporting the Agency's hearings. Regional Directors and officers-in-charge are notified in advance of the beginning of the fiscal year as to the selected contractor for the coming year and the rates and fees stipulated under the contract. The contractor notifies our field offices of its designated local subcontractor or agent for reporting service in each Region.

11870.2 *Notification of Hearing Schedule:* Notification of all hearing schedules must be sent to both the contractor and the local subcontractor. It is highly important that this information be issued promptly and accurately in every case. *See current contract for time limitations for notification of hearing schedules.*

11870.3 *Coordination with the Local Reporter:* Continuous coordination with the local reporter should be effected so that the number and location of hearings, either originally scheduled or rescheduled, are within the limitations of available reporters.

11870.4 *Scheduling Hearings:* Hearings should be scheduled in the Regional or Subregional Office city in every possible instance as this usually results in better delivery time of the transcript, savings in staff time and travel expense, and, under some contracts, a lower reporting rate.

11870.5 *Timely Notification of Cancellations or Postponements:* Notification of all hearings canceled or postponed must be sent to both the contractor and the local subcontractor. Telephone or telegraph notifications are sometimes necessary in order to avoid payment of a fee for a hearing that has been canceled or postponed.

Fees for hearings canceled or postponed without sufficient notice to the reporter constitute a heavy expense. All members of the staff must be alert to the problem of reporter's fees for cancellations that usually occur as a result of consent election agreements. Accordingly, sufficiently in advance of a date scheduled for hearing, every effort should have been made to ascertain if the hearing will proceed or if an agreement can be reached without assembling for the hearing. Many cancellation fees can be avoided by immediate notice to the reporter when the response indicates that no hearing will be held.

See the current contract for time limitations for notification of cancellations or postponements.

11870.6 *Cancellations or Postponements at the Hearing Site:* The official reporter supplies its local subcontractors with a form for endorsement by the hearing officer or field attorney when the reporter is present at the place of a canceled or postponed hearing. This form is the basis for billing by the reporter for the fee for canceled or postponed hearings and in most cases eliminates the necessity for further correspondence on the subject. This fee is not payable when a postponement, recess, or adjournment is ordered during the progress of the hearing. During settlement or consent negotiations at the place of scheduled hearing, the reporter should be released as soon as indications are clear that the hearing is to be canceled or postponed.

11870.7 *Sales of Copies of Transcript:* Pub. L. 92–463 requires that Federal agencies make copies of transcripts of hearings available to interested persons at actual cost of duplication. Copies of transcripts of hearings so ordered shall be provided by the contractor. Care must be exercised with respect to the use of Regional Office copies of the transcript by the parties. The transcript is part of the formal file, and as such is accessible to the public. The use of the transcript, however, should not be volunteered. When a request is received to read or hand copy the office copy, it should be made promptly available under such circumstances as will not delay Board personnel in processing the case. Loan of the transcript for use outside the office is not permitted.

11870.8 *Complaints about Reporting Service:* Complaints about reporting service should be transmitted to the Division of Administration, Facilities and Services Branch.

11870.9 *Other Contract Provisions:* Refer to the current reporting service contract for information relating to other provisions, such as:

a. Fees—attendance fees, cancellation fees (for cancellations and postponements), additional service fees

b. Delivery of transcripts and copies—ordinary copy, expedited copy, prompt copy, daily copy

c. Timely delivery of transcripts

d. Liquidated damages for delay in delivery of transcripts

e. Receipt and processing of transcripts and exhibits

f. Retention of stenographic notes and transcripts.

11872 *Report of Obligated Cost of Hearing, Form NLRB-4237:* It is the responsibility of the hearing officer in an R case and the trial attorney in a C case to complete this form immediately upon the close of the hearing or as of the last day of the month if the hearing continues into the subsequent month. Likewise, if the hearing is postponed or canceled at the hearing site, this form must be completed by the respective hearing officer or trial attorney.

A hearing that is adjourned for 5 or more calendar days is considered a complete hearing for purposes of attendance fees. Therefore, in such situations, this form must be completed and turned in to the office manager immediately upon such adjournment and a new Form NLRB-4237 completed for the reopened hearing. If the hearing officer or trial attorney is away from the Regional Office on the last day of the month, he/she should telephone or telegraph the office to advise the estimated cost of hearing through that date.

11880–11882 *Intra-Agency Communication*

11880 *Communication with Washington:* If a direct communication is received by a Regional Office from another part of the Agency, on a matter that should properly be routed through the Division of Operations Management, answers addressed to the Associate General Counsel should be sent through the Division of Operations Management, along with copies of the original communication.

In submitting other than routine material to the Division of Operations Management such material should be identified.

Each of the Assistant General Counsels in the Division of Operations Management is the focal point of contact between Washington and the Regions assigned to the Assistant General Counsel. The Assistant General Counsel is the Region's representative on all matters relating to casehandling, performance, personnel, and administration. The Assistant General Counsel participates in Washington agendas involving regional cases and assists in handling matters or problems involving the Assistant General Counsel's Regions. Telephone calls should be made directly to the Assistant General Counsel.

All case correspondence to Washington office is sent over the Regional Director's signature.

11881 *Communication with the Board:* All communications that are sent directly to the Board should be addressed to the Office of the Executive Secretary.

11882 *Communication Between Regional Offices:* In the absence of Division of Operations Management clearance to the contrary, casehandling activities of Regional Office personnel should be confined to the geographical limits of their respective Regions. (With respect to travel to points outside of, but close to, the Region, the Regional Director is expected to exercise his/her discretion in the direction of getting the job done most efficiently and economically.)

Out-of-Region interviews will be conducted by personnel from the Region in which the interview is to be conducted, on request by the Regional Director to whose office the case is assigned. Such request (which should be sufficiently detailed to serve as a basis for the requested action without the necessity of extended correspondence) should be sent directly from Regional Director to Regional Director; and the requested materials—affidavits, reports, etc.—may be directly transmitted.

With respect to potential transfer of cases, initial communication between Regional Directors may be undertaken as outlined in section 11720.1.

Regional Directors are encouraged to negotiate directly with other Regions in the district or with contiguous Regions to obtain casehandling assistance and are authorized to issue travel orders to employees who are detailed to another Regional Office subject to the following guidelines.

a. Travel orders may be written for a period not to exceed 29 days. (Periods of 30 days or more require an SF-52 and must be processed through your Assistant General Counsel. See Administrative Manual, sec. 6022.3.)

b. All travel and per diem expenses must be charged to the Region receiving the assistance.

c. Travel orders are to be issued by the Regional Director who provides the Board agent.

d. An original and four copies of the travel order should be prepared. This will be a supplemental travel order to the employee's annual travel order. The travel order should set forth: the employee's name; the Region; the nature of the detail, including identification of case name and number, where appropriate; the estimated cost of the detail as determined by agreement between the Regional Directors; and, the Region to be charged.

e. The travel order and copies should be distributed as follows: the original to the traveler; one copy to the Executive Assistant to the General Counsel; one copy to the assisted Region; one copy to accompany the employee's travel voucher; and one copy to be retained by the issuing Regional Office.

f. In reporting its monthly travel and per diem costs, the releasing office will enter the employee's name under its list of travelers for the month on the *Report of Obligations* and show under "items Chargeable Elsewhere," the amount of the employee's monthly travel chargeable to the other Region and the Region to be charged.

Exceptions to this authorization would be any detail of 30 days or more, or any short-term detail that would produce abnormally high travel costs.

11884 *Communication; Other Agencies*

11884 *Liaison with Other Agencies:* (For more specific guidance pertaining to OSHA matters, refer to G.C. Memos 75-29, 76-14, and 79-4. With respect to Mine Safety, see G.C. Memo 80-10. See also sec. 11751.3.) Normally, regional contacts with other agencies need not be cleared through the Division of Operations Management, except the requirement of clearance would continue when the potential violation concerns possible criminal conduct related to Board proceedings (e.g., fraudulent authorization cards, perjury, or obstruction of justice in connection with NLRB proceedings). Similarly, the clearance requirement would continue prior to referral if alleged unethical conduct of attorneys is involved. (See secs. 10054.3 and 11754.2(a).)

The Regional Office may directly contact local within-Region offices of other agencies in order to procure information (in connection with an actual case) that is available through such offices. For example, a Regional Office may request and secure such factual information from a local unemployment compensation office or mediation service office as the latter are authorized and willing to supply.

Regional Office personnel, within the limitations of Sections 102.117 and 102.118 of the Rules and Regulations (and secs. 11820-11828 herein), should cooperate in furnishing to local offices of other Government agencies such information as may be requested by them. Out-of-Region requests should be handled through the Division of Operations Management.

With respect to possible violations of other Federal statutes, see sec. 10054.3.

11886 *Congressional Inquiries*

11886.1 *Reply by Regional Directors:* Regional Directors have the authority to respond directly to members of Congress concerning inquiries about a status of a case or questions concerning the handling of a case. Courtesy copies of such letters are forwarded to the Division of Operations Management so that Washington might be fully apprised of all matters in which congressional interest has been expressed.

11886.2 *Reply by Washington:* Congressional inquiries concerning the following matters are referred to the Division of Operations Management for consideration and response:

a. Cases may be multiregional

b. Regional or general operations casehandling procedures

c. Cases pending in Washington on advice

d. Cases of national importance or widespread interest

e. The establishment of new Regional, Subregional, or Resident Offices

f. The relocation of regional boundaries

g. A change in the status of an existing office

h. Proposed legislation with respect to changes in our Act

i. Any congressional inquiries of such a nature that a reply should be more appropriately made by the General Counsel.

15004 Alphabetical list of States showing location in relation to regions and subregions. (Note that respective region number follows subregion number to facilitate locating areas serviced.)

Alabama	10, 15
Alaska	19
Arizona	28
Arkansas	16, 26
California	20, 21, 31, 32
Colorado	27
Connecticut	34
Delaware	4, 5
District of Columbia	5
Florida	12, 15
Georgia	10, 12
Hawaii	S-37(20)
Idaho	19, 27
Illinois	13, 14, 33
Indiana	9, 13, 25
Iowa	17, 18, 33
Kansas	17
Kentucky	9, 25, 26
Louisiana	15
Maine	1
Maryland	5
Massachusetts	1
Michigan	7, 30
Minnesota	18
Mississippi	15, 26
Missouri	14, 17
Montana	19, 27
Nebraska	17, 27
Nevada	28, 32
New Hampshire	1
New Jersey	4, 22
New Mexico	28
New York	2, 3, 29
North Carolina	11
North Dakota	18
Ohio	8, 9
Oklahoma	17
Oregon	S-36(19)
Pennsylvania	4, 5, 6

Rhode Island	1
South Carolina	11
South Dakota	18
Tennessee	10, 11, 26
Texas	16, 28
Utah	27
Vermont	1
Virginia	5, 11
Washington	19, S-36(19)
West Virginia	5, 6, 9, 11
Wisconsin	18, 30
Wyoming	27
Puerto Rico	24
U.S. Virgin Islands	24

15010 *Areas Served By Regional and Subregional Offices*

(State and County Coverage)

(Listed in numerical order except that subregions appear directly under respective regions.)

Region 1. Boston, Massachusetts. Services *Maine, New Hampshire, Vermont, Massachusetts,* and *Rhode Island.*

Region 2. New York, New York. In *New York,* services the boroughs of Manhattan and the Bronx in New York City; Orange, Putnam, Rockland, and Westchester Counties.

Region 3. Buffalo, New York. Services all *New York* State Counties except the New York City metropolitan area counties serviced by Regions 2 and 29.

Persons may also obtain service at the resident office located in Albany, New York.

Region 4. Philadelphia, Pennsylvania. In *Pennsylvania,* services Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, and Wyoming Counties; in *New Jersey,* services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties; and in *Delaware,* services New Castle County.

Region 5. Baltimore, Maryland. Services *Maryland* and the *District of Columbia*; in *Delaware,* services Kent and Sussex Counties; in *Pennsylvania,* services Adams, Cumberland, Franklin, and York Counties; in *Virginia,* services Accomack, Albemarle, Amelia, Arlington, Augusta, Brunswick, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Highland, Isle of Wright, James City. King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Madison, Mathews, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince

George, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York Counties, and the independently incorporated Virginia cities, not part of, but located within or adjacent to, the territory defined by these Virginia counties; and in *West Virginia*, services Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton Counties.

Persons may also obtain service at the resident office located in Washington, D.C.

Region 6. Pittsburgh, Pennsylvania. In *Pennsylvania*, services Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland Counties; and in *West Virginia*, services Barbour, Braxton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, and Wood Counties.

Region 7. Detroit, Michigan. In *Michigan*, services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luse, Mackinac, Macomb, Manistee, Mason, Mecoste, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties.

Persons may also obtain service at the resident office located in Grand Rapids, Michigan.

Region 8. Cleveland, Ohio. In *Ohio*, services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Washington, Wayne, Williams, Wood, and Wyandot Counties.

Region 9. Cincinnati, Ohio. In *Ohio*, services Adams, Athens, Brown, Butler, Champagne, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Mercer, Miami, Montgomery, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Vinton, and Warren Counties; in *Indiana*, services Clark, Dearborn, and Floyd Counties; and in *West Virginia*, services Boone, Cabell, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mingo, Nicholas, Putnam, Raleigh, Roane, Wayne, and Wyoming Counties; and in *Kentucky*, services Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Bullitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gellatin, Garrard, Grant, Greenup, Hardin, Harlan, Harrison, Henry, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Marion, Martin, Mason, Meade, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Spencer, Taylor, Trimble, Washington, Whitley, Wolfe, and Woodford Counties.

Region 10. Atlanta, Georgia. In *Georgia*, services Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, De Kalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lee, Liberty, Lincoln, Long, Lumpkin, McDuffie, McIntosh, Macon, Madison, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth Counties; in *Tennessee*, services Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington Counties; and in *Alabama*, services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties.

Persons may also obtain service at the resident office located in Birmingham, Alabama.

Region 11. Winston-Salem, North Carolina. Services *North Carolina* and *South Carolina*. In *Tennessee*, services the city of Bristol in Sullivan County; in *Virginia*, services Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe Counties, and the independently incorporated Virginia cities, not part of, but located within or adjacent to the territory defined by these Virginia counties; in *West Virginia*, services Greenbriar, Mercer, Monroe, and Summers Counties.

Region 12. Tampa, Florida. In *Florida*, services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla Counties; and in *Georgia*, services Appling, Atkinson, Bacon, Brantley, Brooks, Camden, Charlton, Clinch, Coffee, Davis, Decatur, Echols, Glynn, Grady, Jeff, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne Counties.

Persons may also obtain service at the resident offices located in Miami and Jacksonville, Florida.

Region 13. Chicago, Illinois. In *Illinois*, services Cook, Du Page, Kane, Lake, and Will Counties; in *Indiana*, services Lake County.

Region 14. St. Louis, Missouri. In *Illinois*, services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson Counties; and in *Missouri*, services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties, and the Independent City of St. Louis.

Region 15. New Orleans, Louisiana. Services *Louisiana*. In *Mississippi*, services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in *Alabama*, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; and in *Florida*, services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties.

Region 16. Fort Worth, Texas. Services the entire State of *Texas* with the exception of El Paso, Culberson, and Hudspeth Counties. In *Arkansas*, services Miller County.

Persons may also obtain service at the resident offices located in Houston and San Antonio, Texas.

Region 17. Kansas City, Kansas. Services *Oklahoma* and *Kansas*. In *Missouri*, services Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingston, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Randolph, Ray, St. Clair, Saline, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright Counties; in *Iowa*, services Fremont, Mills, and Pottawattamie; and in *Nebraska*, services Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Filmore, Franklin, Frontier, Furnas, Gage, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Knox, Lancaster, Lincoln, Logan, Loup, McPherson, Madison, Merick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platt, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties.

Persons may also obtain service at the resident office located in Tulsa, Oklahoma.

Region 18. Minneapolis, Minnesota. Services *North Dakota*, *South Dakota*, and *Minnesota*. In *Iowa*, services Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright Counties; in *Wisconsin*, services Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn Counties.

Persons may also obtain service at the resident office located in Des Moines, Iowa.

Region 19. Seattle, Washington. Services *Alaska*, *Montana*, *Idaho*, and all counties in *Washington* except Clark. In *Idaho*, services Adams, Benewah, Bonner, Boundary, Clark, Clearwater, Custer, Fremont, Idaho, Kootenai, Latah, Lemhi, Lewis, Nex Perce, Shoshone, and Valley Counties; and in *Montana*, services Beverhead, Broadwater, Cascade, Deer, Lodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Pondera, Powell, Revalli, Sanders, Silver Bow, Teton, and Toole Counties.

Subregion 36. Portland, Oregon. Services *Oregon*. In *Washington*, services Clark County.

Persons may also obtain service at the resident office located in Anchorage, Alaska.

Region 20. San Francisco, California. In *California*, services Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties.

Subregion 37. Honolulu, Hawaii. Services *Hawaii*.

Region 21. Los Angeles, California. In *California*, services Imperial, Orange, Riverside, and San Diego, and that portion of Los Angeles County lying east of Harbor Freeway and Gaffey Street, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30).

Persons may also obtain service at the resident office located in San Diego, California.

Region 22. Newark, New Jersey. In *New Jersey,* services Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

Region 24. Hato Rey, Puerto Rico. Services *Puerto Rico* and the *U.S. Virgin Islands.*

Region 25. Indianapolis, Indiana. Services *Indiana,* with the exception of Lake, Clark, Dearborn, and Floyd Counties; in *Kentucky,* services Daviess and Henderson Counties.

Region 26. Memphis, Tennessee. Services all of *Arkansas* except for Miller County. In *Tennessee,* services Bedford, Benton, Bledsoe, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Davidson, Decatur, De Kalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Marion, McNairy, Macon, Madison, Marshall, Maury, Montgomery, Moore, Obion, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, Wilson Counties; in *Mississippi,* services Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha Counties; and in *Kentucky,* services Adair, Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittendon, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster Counties.

Persons may also obtain service at the resident offices located in Little Rock, Arkansas, and in Nashville, Tennessee.

Region 27. Denver, Colorado. Services *Wyoming, Colorado,* and *Utah.* In *Nebraska,* services Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux Counties; in *Idaho,* services Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington Counties; and in *Montana*, services Big Horn, Blaine, Gargon, Carte, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Gold Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties.

Region 28. Phoenix, Arizona. Services *Arizona* and *New Mexico*. In *Texas*, services Culberson, El Paso, and Hudspeth Counties; and in *Nevada*, services Nye, Lincoln, and Clark Counties.

Persons may also obtain service at the resident offices located in Albuquerque, New Mexico; El Paso, Texas; and Las Vegas, Nevada.

Region 29. Brooklyn, New York. In *New York*, services the borough of Queens.

Region 30. Milwaukee, Wisconsin. In *Wisconsin*, services Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood Counties; in *Michigan*, services Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon Counties.

Region 31. Los Angeles, California. In *California*, services Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties that portion of Los Angeles County lying west of Harbor Freeway and Gaffey Street, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30).

Region 32. Oakland, California. In *California*, services Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne Counties; and in *Nevada*, services Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine Counties.

Region 33. Peoria, Illinois. In *Illinois*, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Winnebago, and Woodford Counties; and in *Iowa*, services Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, and Scott Counties.

Region 34. Hartford, Connecticut. Services *Connecticut.*

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